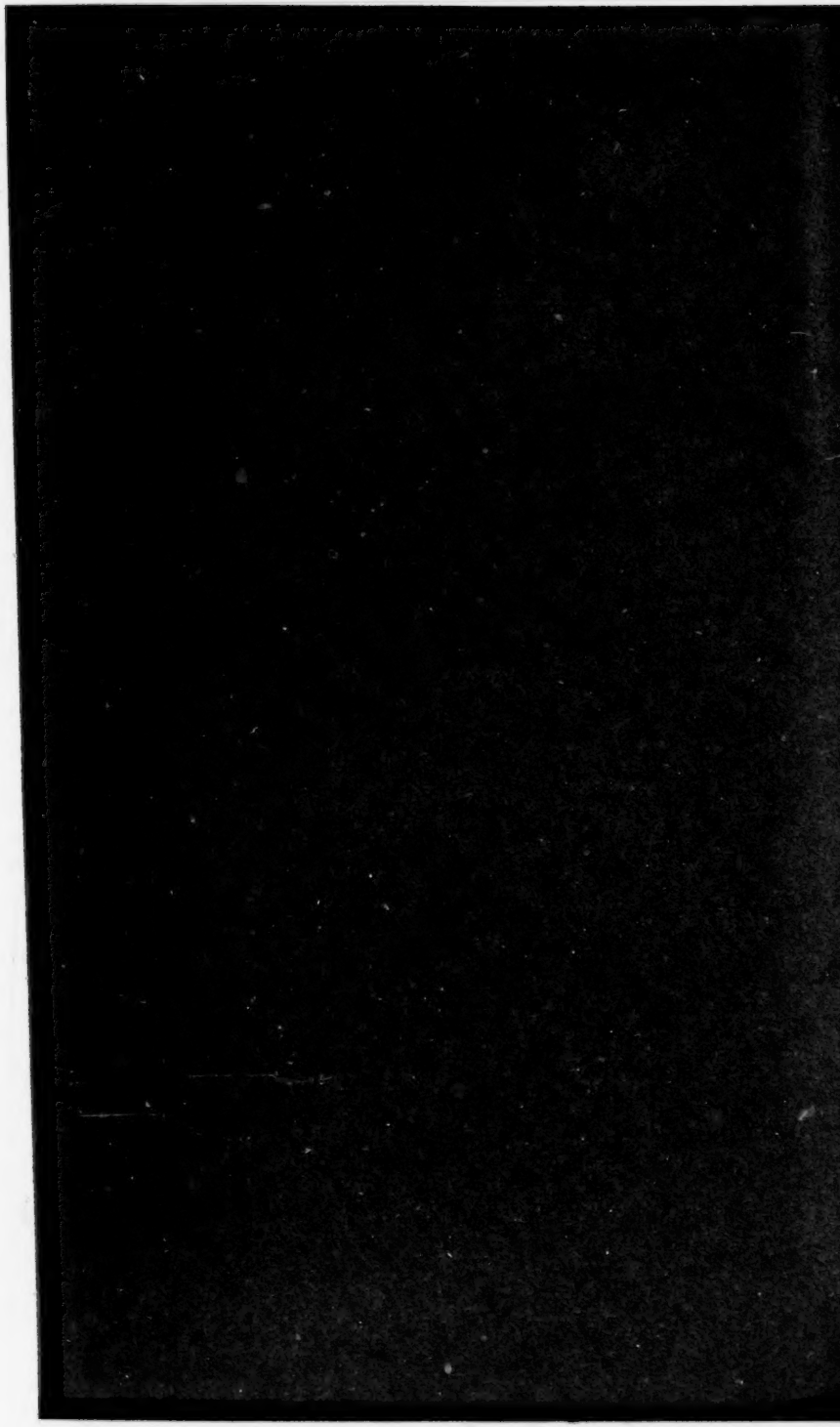

IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1909

Harry T. Herndon, Prosecuting Attorney of Clinton County, Missouri, and John E. Swanger, Secretary of State of the State of Missouri, *Appellants*,

vs.

The Chicago, Rock Island and Pacific Railway Company, *Appellee*.

No. 150

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Supplemental Brief for Appellee.

Since preparing the original brief in this case, solicitors for Appellee have been furnished with brief of the Appellants, in which some objections are urged to the Bill which were not raised on the argument on the demurrer, in the court below. It seems proper to discuss briefly some of these objections.

I.

The Bill is not Multifarious.

1. The courts have laid down no general rule for determining when a bill is or is not multifarious. Each case must be determined on its own facts and circumstances; and largely, if not wholly, upon the question of convenience. The convenience of the defendants alone is not the final test. The convenience of all the parties, and of the court, is to be considered. No case is a criterion for any other case. The rule, as laid down by Story, is, that the courts "will be governed by those analogies, which seem best founded on general convenience, and will best promote the due administration of justice, without multiplying unnecessary litigation on the one hand, or drawing suitors into needless and oppressive expense on the other." Sto. Eq., Sec. 539.

In the recent case of *Graves v. Ashburn*, 30 Sup. Ct. 108, 110, Mr. Justice Holmes, delivering the opinion of the court, said:

"The objection of multifariousness is an objection of inconvenience."

In the leading case of *Campbell v. Mackey*, 1 Mylne & Craig, 603, 617, where certain of the defendants demurred specially on the ground of multifariousness, Lord Cottenham, said:

"To lay down any rule applicable universally or to say what constitutes multifariousness as an abstract proposition, is, upon the authorities, utterly impossible. The cases upon the subject are extremely various; and the court in deciding them, seems to have considered what was convenient in particular circumstances, rather than to have attempted to lay down an absolute rule."

There is nothing in this record tending to show that either of the defendants has been subjected to any material inconvenience or expense on account of being joined in this suit instead of having been sued separately. They are public officers; the suit has been taken in charge by the Attorney General, and, apparently, neither of the defendants is being put to any trouble or expense whatever.

2. The cause of action stated against the Secretary of State is connected with and grows out of the action against the Prosecuting Attorney. Each is more or less interested in all the matters in controversy. The Prosecuting Attorney threatened the railway company with prosecutions under a state statute, and the Secretary of State threatened the company with forfeiture of its right to do business in the state if it should resort to the jurisdiction of the court below in defending against such threatened prosecutions.

Under such circumstances, it was entirely appropriate, and in no way inconvenient or oppressive to the defendants, or inconvenient to the court, for the rail-

way company to join the defendants in this action. In taking jurisdiction of the complaint against the Prosecuting Attorney the court might well, in the same suit, stay the hand of the Secretary of State, in his threat to punish the complainant for invoking the jurisdiction of that court in this case.

II.

The Objection of Multifariousness comes too Late.

1. Multifariousness is a technical objection, (*Brown v. Guarantee Trust Co.*, 128 U. S. 403, 412) which must be raised, if at all, at the first opportunity, and if not so presented, it is waived.

2. The general allegation in the demurrer, that the Bill does not state a cause which entitles the complainant to any relief, does not raise the objection of multifariousness. Such an objection ought, when it appears on the face of the bill, to be raised by special demurrer.

Billings v. Mann, 156 Mass. 203, 205.

It is said in Street's Federal Equity Practice, Vol. 1, Sec. 936:

"A special demurrer must always be used when the defect to be relied on is one of mere form. It must also be used to get the benefit of any defect not absolutely destructive of the equity of the bill. Multifariousness is a defect of this kind. Hence, in case of a demurrer for mulifariousness, a mere allegation that the bill is multifarious is informal and insufficient. The de-

murrer should state that the bill unites distinct matters upon one record, and it should point out how this is so."

The same rule is laid down in Daniel's Chancery Pleading & Practice, Sixth American Edition, 586, note 5, where it is said:

"And in the case of a demurrer for multifariousness, a mere allegation 'that the bill is multifarious' will be informal: it should state, as the ground of demurrer, that the bill unites distinct matters upon one record, and show the inconvenience of so doing. *Rayner v. Julian,* 2 Dick. 677; 5 Mad. 144, n. (b); *Barber v. Barber,* 4 Drew. 666; 5 Jur. N. S. 1197."

Jackson v. Glos, 144 Ill. 21.

4. But it is said that the objection of multifariousness may be taken by this Court on its own motion. There are extreme cases in which the court on the hearing may, *sua sponte,* raise the objection of multifariousness, and it has been said that this objection might in a like manner be taken even on appeal. But there seems to be no case in which an appellate court has, of its own motion, raised and sustained such an objection. In the leading case of *Oliver v. Piatt,* 3 Howard, 332, 496, Mr. Justice Story, delivering the opinion of the court, said:

"It was well observed by Lord Cottenham, in *Campbell v. Mackay,* 1 Mylne & Craig, 603, and the same doctrine was affirmed in this court, in *Gaines and Wife v. Relf and Chew,* 2 How. 619, 642, that it is impracticable to lay down any rule, as to what constitutes

multifariousness, as an abstract proposition; that each case must depend upon its own circumstances; and much must necessarily be left, where the authorities leave it, to the sound discretion of the court. But if the objection were tenable, (as we are of opinion it is not), it would be quite too late to insist upon it. The objection of multifariousness cannot, as a matter of right, be taken by the parties, except by demurrer, or plea, or answer; and if not so taken, it is deemed to be waived. It cannot be insisted upon by the parties even at the hearing in the court below, although it may at any time be taken by the court *sua sponte*, wherever it is deemed by the court to be necessary or proper to assist it in the due administration of justice. And at so late a period as the hearing, so reluctant is the court to countenance the objection, that, if it can get on in the cause to a final decree without serious embarrassment, it will do so, disregarding the fault or error, when it has been acquiesced in by the parties up to that time. *A fortiori*, an appellate court would scarcely entertain the objection, if it was not forced upon it by a moral necessity. There is no pretense to say that such is the predicament of the present cause in this court."

5. If this objection was raised by the demurrer, or otherwise, it was not sustained by the Court, and there is nothing in this record indicating that the court below abused its discretion.

III.

The Construction and Effect of the Act of March 19, 1907.

1. The contention of counsel for appellant that the Bill misconstrues the act of March 19, 1907, is not sustained by the allegations of the Bill. It is there, and

still is, contended that the statute has to do with the transfer of passengers, baggage, mails and express freight. The contention of appellee is, that having admittedly provided adequate facilities for such transfers at Lathrop, any additional requirement with respect to its interstate trains, is a direct regulation of interstate commerce, and void. *Atlantic Coast Line v. Wharton*, 207 U. S. 334.

It may be true, that where there are no passengers or things to be transferred, trains need not stop. But the statute, if valid, gives a passenger, or a shipper, the right to demand the stoppage of all trains on independent connecting roads to enable such transfers to be made.

In the case of branch lines of the same system, it is provided that trains shall stop "on a flag or signal." The requirement with respect to independent lines is more rigid. They fail to stop at their peril. One railroad may possibly know, by making inquiry, whether it carries passengers or freight desiring or requiring transfer at the junction point, but it has no means of knowing when it must stop its trains for the transfer to them of passengers or freights from connecting lines. This regulation, with respect to through, fast interstate trains, is, especially where ample facilities are furnished for such transfers, an unreasonable and vex-

atious burden upon, and, therefore, a direct regulation of, interstate commerce.

2. If the defendant Herndon had placed the construction on this statute, which his counsel now advocate, he, perhaps, would not have threatened to harrass the railway company with prosecutions to recover penalties imposed by it. It is said that he has not brought any such suit as threatened. It would be more accurate to say that the record does not show that such suits have been brought, since, as a matter of fact, he has brought a suit with one hundred and twenty-two counts. But it is not contended that any misconstruction of the law by the Prosecuting Attorney can make it unconstitutional. The contention is, that as to complainant's trains which do not stop at Lathrop, the act, properly construed, is a direct regulation of, and an unreasonable burden upon, interstate commerce; and that he may be rightfully enjoined from harrassing complainant with prosecutions to recover penalties whether imposed by the act or not.

3. It is urged, further, that inasmuch as the act of March 19, 1907, was substantially in effect when the complainant came into the state, it cannot now assail it. It is sufficient answer to say that the question whether this act is a direct regulation of commerce as to trains carrying such commerce, does not depend

upon the ownership or control of the trains, or the citizenship of the owners. The objections urged against the statute could just as well be made by a domestic corporation of the state.

IV.

The Authority of the Secretary of State to Revoke the Authority of a Foreign Corporation to do Business does not depend Upon the Result of its Resort to the Jurisdiction of a Federal Court.

1. Appellants urge that, assuming that no case has been made against Herndon, the suit against Swanger cannot be maintained. That does not follow. The power conferred upon the Secretary of State by the act of March 13, 1907, to revoke the authority of a foreign railway corporation to do business, as a penalty for resorting to the jurisdiction of a federal court, does not depend upon the issue of such suit. It is the bringing of a suit in a federal court or the removal of a suit from a court of the state to a federal court which is penalized. The statute does not say that the penalty shall be imposed only where the foreign corporation is successful in the suit.

V.

Appellee's Right to do Business in Missouri.

1. It is urged by appellants that appellee secured no right to do business in Missouri under the act of 1870. In the first place, this contention is inconsistent

with the fourth ground of demurrer assigned by appellants. It is there alleged that it appears by the Bill that complainant has consolidated by purchase or otherwise, with a railroad company organized under the laws of the State of Missouri, and that by virtue of said consolidation it has secured all or a part of the lines of railroad in the State of Missouri, *now owned and operated by said complainant.*

The rightful ownership by the complainant of its lines in Missouri was conceded, but it was contended that by reason of the consolidations and purchases set out in the Bill, complainant had become subject to the jurisdiction of the courts of the State, as if it had been organized under the laws of the State of Missouri, and was not entitled to remove suits instituted in state courts to federal courts.

Having made these admissions, and having tendered these issues for the consideration of the court below, appellants will not be permitted here to withdraw their admission, and present a new issue, founded upon an inconsistent claim of law and fact.

2. Appellants admit that the consolidation of the Chicago and Southwestern Railway, a Missouri corporation with the Iowa corporation of the same name, as set out in the Bill was valid, but claim that it did not change the statues of the former under the laws of Missouri. To the extent that the consolidated company was still a Mis-

souri corporation, the claim is true. But appellants claim that there is a defect in complainant's chain of title, in that the Iowa Southern and Missouri Northern Railroad Company was not authorized to purchase the railway and property of the consolidated Chicago and Southwestern Railway Company at the foreclosure sale referred to in the Bill. (Record, 8.)

That this purchase was fully within the purview of the act of 1874 seems clear, but if it was not, that question cannot be raised here by these appellants, not only because it is not raised by the demurrer, but because it can be raised only by some party directly in interest, or by the state. The right of the Secretary of State, if any, to forfeit the right of appellee to do business in the state arises under the act of March 13, 1907. If he has any power to forfeit this right it is because appellee has brought this suit, and not because its title to some of its property is defective. The Bill shows that appellee owns and operates other railroads in the state which never belonged to the Iowa Southern and Missouri Northern Railroad Company. The sale to the last named company was made many years ago, and about thirty years ago the property so purchased was acquired by consolidation and purchase by the complainant; and there is no claim that during all this time the state has not acquiesced in such purchase of

the property and its improvement and operation by complainant.

In any view that may be taken of the case, the regularity of the title of complainant to a part of its property in Missouri is not presented on this record and cannot be litigated by those defendants.

3. In addition to what has been said under this head, the license to do business in the State for a term ending June 30, 1930, granted to the complainant by the Secretary of State, (Record, 12), is a contract which can only be set aside for a good and sufficient cause. The bringing of this suit is not a sufficient cause.

It is said in the brief for appellants, (p. 42) that no fees or tax was paid to the State for this license. No consideration is necessary to sustain a grant by a state. The Bill, however, alleges that complainant had, before receiving the license, fully complied with the act, and the certificate recites the same fact. The certificate further shows that the capital stock of the company invested in the state at that time was eight million dollars, three million dollars of which was invested before April 21, 1891, the date on which the act took effect. It follows that there was due from the company a license tax on the $5,000,000 invested after the act took effect. The Company could not have "in all respects complied with the requirement of law

governing Foreign Private Corporations" as certified by the Secretary of State, without paying this tax It will be presumed that this officer performed his duty, and that he did not issue the license without collecting the tax which it was his duty to collect. If it has not been paid the Railway Company is still liable for it. The demurrer admits all reasonable presumptions and necessary inferences of facts from the matters stated in the bill. *McClanahan v. Davis*, 8 How. 170.

Section 2 of the Act of April 21, 1891, Laws of Missouri 1891, p. 75, is as follows:

"Every company incorporated for purposes of gain under the laws of any other state, territory or country, now or hereafter doing business within this state, shall file in the office of the secretary of state a copy of its charter or articles of incorporation, or in case such company is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly certified and authenticated by the proper authority; and the principal officer or agent in Missouri of the said corporation shall make and forward to the secretary of state, with the articles or certificate above provided for, a statement, duly sworn to of the proportion of the capital stock of the said corporation which is represented by its property located and business transacted in the State of Missouri; and such corporation shall be required to pay into the treasury of this state, upon the proportion of its capital stock represented by its property and business in Missouri, incorporating taxes and fees equal to those required of similar corporations formed within and under the laws of this state. Upon a compliance with the above provisions by said corpora-

tion, the secretary of state shall give a certificate that said corporation has duly complied with the laws of this state, and is authorized to do business therein, stating the amount of its entire capital and of the proportion thereof which is represented in Missouri; and such certificate shall be taken by all courts in this state as evidence that the said corporation is entitled to all the rights and benefits of this act, and such corporation shall enjoy those rights and benefits for the time set forth in its original charter or articles of association, unless this shall be for a greater length of time than is contemplated by the laws of this state, in which event the time of duration shall be reckoned from the creation of the corporation to the limit of time set out in the laws of this state: *Provided,* that nothing in this act shall be taken or construed into releasing foreign loan, building and loan or bond investment companies on the partial payment or installment plan from any provisions of law requiring them to make a deposit of money with a proper officer of this state to protect from loss the citizens of this state who may do business with such loan, building and loan or bond investment companies: *Provided,* that the requirement of this act to pay incorporating tax or fee shall not apply to railroad companies which have heretofore built their lines of railway into or through this state; *and, provided further,* that the provisions of this act are not intended to and shall not apply to "drummers" or traveling salesmen soliciting business in this state for foreign corporations which are entirely non-resident."

It will be observed that this section requires a foreign corporation, applying for a license, to pay into the treasury of the state upon the proportion of its capital stock represented by its property and business in the state, incorporating taxes and fees equal to those required of similar corporations formed within and

under the laws of the state, and that upon compliance with this provision the secretary of state shall give a certificate that the corporations has only complied with the laws of the state, and is authorized to do business therein, stating the amount of its entire capital stock, and of the proportion thereof represented in Missouri. There is a proviso in this section that "the requirement of this act to pay incorporating tax or fee shall not apply to railroad companies which have heretofore built their lines of railway into or through this state." This statute was construed by the Supreme Court of Missouri in *State ex rel. v. Cook*, 171 Mo. 348. In that case the railroad company had, prior to April 21, 1901, built its line of railway into the state, and its proportion of its capital represented by this property was $1,600,000. On February 11, 1902, the company made an application for a license, its proportion of property in the state then having increased to $1,939,000, and offered to pay $1.50, the fee required for the license, without paying any sum as an incorporation tax, claiming it was exempt from paying such tax under the foregoing proviso, its road having been built into the state before the taking effect of the act. The secretary of state demanded the payment of a license tax, and mandamus was brought in the supreme court to compel him to issue the license.

The court held that this proviso only applied to investments made by a foreign railway company prior to the taking effect of the act, and that the company before it was entitled to a license to do business must pay a license tax on its property invested or to be invested in the state subsequent to April 21, 1891, and that the clause requiring the paying of incorporating taxes and fees equal to those required of similar corporations formed within and under the laws of this state, required a foreign corporation to do just what a domestic corporation was required to do when it increased its capital or investment in the state.

Section 956, Article 1, Chapter 12, Revised Statutes of Missouri, 1899, p. 322, providing for the payment of fees upon the organization of a corporation, or the increase of its capital stock, is as follows:

"*In creation and organization, what necessary—increase of capital stock fees to be paid.* No corporation, company or association other than those formed for benevolent, religious, scientific, fraternal beneficial or educational purposes, shall be created or organized under the laws of this state, unless the persons named as corporators, shall, at or before the filing of the articles of association or incorporation, pay into the state treasury fifty dollars for the first fifty thousand dollars or less of the capital stock of such corporation or association, and a further sum of five dollars for every additional ten thousand dollars of its capital stock; and no increase of the capital stock of any such corporation, company or association shall be valid or

effectual until such corporation, company or association shall have paid into the state treasury five dollars for every ten thousand dollars or less of such increase in the capital stock of said corporation or association; and it shall be the duty of said corporation or association to file a duplicate receipt of the state treasurer for the payments herein required to be made, with the secretary of state, as is provided by this article for the filing of articles of incorporation or association."

It, therefore, follows that before the complainant was entitled to receive its certificate entitling it to do business in Missouri it was required to pay the secretary of state a fee of $1.50 for the certificate and a tax of $5.00 on every $10,000 of the increase of its investment subsequent to April 21, 1891, or $2500. The license granted by the secretary of state was not, therefore, a mere license revocable at will, but a grant of authority to the railway company to do business in the state for a given period in consideration of the payment of a license tax of $2500 in addition to the fee due the secretary of state for issuing the license.

VI.

The Demurrer Goes to the Whole Bill. If the Bill States any Ground for Equitable Relief, the Demurrer was Properly Overruled.

Vernplank v. Caines, 1 Johns. Ch. 57;
Higginbotham v. Barnet, 5 Johns. 184;
Cochrane v. Adams, 50 Mich. 16;
Stewart v. Masterson, 131 U. S. 151.

In *Merriam v. Holloway Co.*, 43 Fed. 455, Mr. Justice MILLER said:

"The difficulty is that the parties demur to the whole bill, and of course if there is any one thing in the bill that is good,—that is to say, if the bill taken altogether entitles the complainant to some kind of relief,—the demurrer should be overruled."

In *Todd v. Gee*, 17 Ves. 274, Lord Eldon said:

"On those two grounds, therefore, the demurrer would not do: but it cannot be good in part and bad in part; and, going to relief, to which the plaintiff is entitled, it is of no consequence, that there is some relief to which he is not entitled."

Even though it should be found that the Bill does not state a cause for equitable relief against one of the defendants, the demurrer, going, as it does, to the whole Bill, was properly overruled if it states a cause for such relief against the other.

Respectfully submitted.

E. C. LINDLEY,

M. A. LOW,

Solicitors Appellee.

IN THE SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1909

Harry T. Hamlin, Prosecuting Attorney of Clinton County, Missouri, and John E. Swanger, Secretary of State of the State of Missouri,
Appellants,

vs.

The Chicago, Rock Island and Pacific Railway Company,
Appellee.

No. 139

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Brief of The Chicago, Rock Island and Pacific Railway Company, Appellee.

E. C. LINDLEY,
H. A. LOW,
Solicitors for Appellee.

Western Printing Company, Topeka.

IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1909

Harry T. Herndon, Prosecuting Attorney of Clinton County, Missouri, and John E. Swanger, Secretary of State of the State of Missouri. *Appellants,*

vs.

The Chicago, Rock Island and Pacific Railway Company, *Appellee.*

No. 150

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Brief of The Chicago, Rock Island and Pacific Railway Company, Appellee.

STATEMENT.

This suit was brought in the Circuit Court of the United States for the Western District of Missouri by The Chicago, Rock Island and Pacific Railway Company, a corporation organized and existing under the laws of the states of Illinois and Iowa, against Harry T. Herndon, Prosecuting Attorney of Clinton County,

Missouri, and John E. Swanger, Secretary of State of the State of Missouri, by filing a

BILL OF COMPLAINT.

as follows, formal parts being omitted:

To the Honorable Judges of the Circuit Court of the United States for the Western District of Missouri:

Your orator, The Chicago, Rock Island and Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the states of Illinois and Iowa, and a citizen of each of said states, brings this its bill of complaint against Harry T. Herndon, as Prosecuting Attorney of the County of Clinton, State of Missouri, and a citizen and resident of the said County of Clinton, and State of Missouri, and of the Western District thereof, and John E. Swanger, Secretary of State of the State of Missouri, and a citizen and resident of Sullivan County, and State of Missouri, and Western District thereof, and thereupon avers.

FIRST.

Your orator, The Chicago, Rock Island and Pacific Railway Company is a railway corporation duly organized and existing under and by virtue of the laws of the States of Illinois and Iowa, and a citizen and

resident of said States of Illinois and Iowa, and is, by the laws of the State of Missouri, authorized to do business in the said State of Missouri. It is with its railway engaged in state and interstate commerce, and operates lines of railway in the States of Illinois, Iowa, Minnesota, South Dakota, Nebraska, Wisconsin, Colorado, Arkansas, Tennessee, Louisiana, Oklahoma and Indian Territories, Kansas and Missouri.

Of the said lines of railway, the following, are and for several years last past have been owned and operated by your orator in carrying on its business as a common carrier in transporting both state and interstate business within the State of Missouri:

(*a*) A line of railway beginning on the north line of the State of Missouri near the town of Lineville, lying in the County of Wayne, in the State of Iowa; extending thence southwesterly through the counties of Mercer, Grundy, Daviess, De Kalb, Clinton, and Platte, in the said State of Missouri, to a point on the bank of the Missouri River in said County of Platte, opposite the City of Leavenworth, in Leavenworth County, Kansas.

(*b*) A line of railway beginning at the town of Edgerton Junction, situated upon the foregoing line of railway in the said County of Platte; extending thence in a northwesterly direction through the

counties of Platte and Buchanan in the said State of Missouri, to a point on the bank of the Missouri River in said County of Buchanan opposite the City of Atchison, in Atchison County, Kansas.

(*c*) A line of railway beginning at the town of Altamont situated on the first mentioned line of railway of your orator in the County of Daviess; extending thence in a westerly direction through the counties of Daviess, DeKalb and Buchanan in the said State of Missouri, to the City of St. Joseph in said County of Buchanan and State of Missouri.

(*d*) A line of railway connecting with the last aforesaid line of railway at the said City of Saint Joseph in the said County of Buchanan, and running thence southerly through the said County of Buchanan to the town of Rushville in said County of Buchanan, where it connects with the aforesaid line of railway (b) running from Edgerton Junction, aforesaid, to a point on the Missouri River in the said County of Buchanan, opposite the City of Atchison, Kansas.

(*e*) From Cameron Junction, situated on the first mentioned line of railway of your orator in the County of Clinton, aforesaid, your orator possesses trackage rights, with the right to do all business of a common carrier over the tracks of the Chicago, Bur-

lington and Quincy Railway Company, in a southeasterly direction through the counties of Clinton, Clay and Jackson, in the said State of Missouri, to the City of Kansas City in said County of Jackson and State of Missouri. Said trackage right will exist for a long term of years.

(*f*) From the aforesaid City of Kansas City in the said County of Jackson, State of Missouri, your orator possesses trackage rights, with the right to do all business as a common carrier, over the tracks of the Chicago, Burlington and Quincy Railway Company, in a northerly direction through the counties of Jackson, Clinton, Platte and Buchanan, in the said State of Missouri, to the aforesaid town of Rushville, in said County of Buchanan and State of Missouri. Said trackage rights will exist for a long term of years.

And your orator alleges that the aforesaid line or railway (a), running from the north line of the State of Missouri, near the town of Lineville, lying in the County of Wayne in the State of Iowa, in a southerly direction to a point on the bank of the Missouri River in the County of Platte, opposite the City of Leavenworth in Leavenworth County, Kansas, was constructed and completed in the fall of 1871, by the Chicago and Southwestern Railway Company, and,

as it was completed, possession of the same was assumed by The Chicago, Rock Island and Pacific Railroad Company, a railway corporation organized and existing under and by virtue of the laws of the State of Illinois and Iowa, under an arrangement to operate it on account for the Chicago and Southwestern Railway Company until some permanent arrangement should be made between the two companies. Said the Chicago and Southwestern Railway Company was a consolidated corporation under the laws of Missouri and Iowa, being a consolidation, on September 25th, 1869, of the Chicago and Southwestern Railway Company of Iowa and the Chicago and Southwestern Railway Company of Missouri, said last mentioned corporation being chartered by the Legislature of the State of Missouri on March 3rd, 1869, to construct a railroad located as follows:

"The western terminus of said Chicago and South-western railroad is hereby fixed at a point on the Missouri River, in Platte county, opposite or nearly opposite to the city of Leavenworth, Kansas; and said company may build, maintain and operate a branch railroad from the most practicable point on the main line of said road to the northern boundary line of this state, in the direction of Ottumwa, in the State of Iowa."

Said consolidated coroporation, the Chicago and Southwestern Railway Company, was consolidated, and aforesaid line of railway constructed under and by vir-

tue of a full compliance with an act of the Legislature of the State of Missouri, approved March 2nd, 1869, and an act of the Legislature of the State of Missouri, approved March 24th, 1870, which acts are respectively as follows:

"An act to authorize the Consolidation of Railroad Companies in This State with Companies Owning Connecting Railroads in Adjoining States.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That any railroad company organized under the general or special laws of this state, whose track shall at the line of the state connect with the track of the railroad of any company organized under the general or special laws of any adjoining state, is hereby authorized to make and enter into any agreement with such connecting company, for the consolidation of the stock of the respective companies whose tracks shall be so consolidated, upon such terms and conditions and stipulations as may be mutually agreed between them, in accordance with the laws of the adjoining state in which the road is located, with which connection is thus formed.

SEC. 2. Such consolidation shall not be made, however, unless the terms and provisions thereof shall be approved by a majority of the stock or the holders of a majority of the capital stock in each of said companies whose stoock shall be consolidated, at some meeting called expressly for that purpose, or by the approval of the same by the holders of the same amount of stock in each of said companies, in writing and signed by them.

SEC. 3. When the terms of said consolidation shall have been agreed upon as above stated and approved in one or the other of the modes above set forth, it shall be competent for the boards of di-

rectors in each of said connecting companies to carry the same into effect, and adopt by a resolution a new corporate name for the company which shall be formed by the consolidation, and to call in the certificates of stock then outstanding in each company, and exchange them for stock in the new company, as may have been agreed by the terms of the consolidation; and a copy of the said consolidation agreement and the resolutions of consolidations, and the name adopted for the new company, shall be filed with the secretary of state, and shall be conclusive evidence of such consolidation and of the corporate name of the consolidated company; provided, that whenever at any place on the line of this state two or more railroads in this state are competing for the business to or from any railroad in an adjoining state, and a consolidation of either of such competing roads with the road in and adjoining state would diminish or prevent such competition, then, and in such case, consolidation shall not be permitted under this act, and in case any railroad in this state shall hereafter intersect any such consolidated road, said road or roads shall have the right to run their freight cars, without breaking bulk, upon said consolidated road, and such consolidated road shall transact the business of said intersecting or connecting road or roads, on fair and reasonable terms, and the same may be enforced by appropriate legislation; and, provided further, that the state reserves to itself the right to guarantee to any road that may hereafter be built to any such point, the rigth to make a fair contract for the transportation of freight and passengers with such consolidated road, and in case any such railroad company shall consolidate or attempt to consolidate with a connecting road, contrary to the provisions of this act, any person or party aggrieved may bring action against them in the Circuit Court of any county through which such road may pass, which court shall have jurisdiction in the

case, and power to restrain by injunction or otherwise.

SEC. 4. Any such consolidated company shall be subject to all the liabilities, and bound by all the obligations of the company within this state, which may be thus consolidated with one in the adjacent state, as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the state, and be entitled to the same franchises and privileges under the laws of this state, as if the consolidation had not taken place.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 2nd, 1869."

"An act to Amend Chapter Sixty-three of the General Statutes Entitled 'Of Railroad Companies,' so as to Authorize the Consolidation, Leasing and Extension of Railroads.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. Any two or more railroad companies in this state, existing under either general or special laws, and owning railroads constructed wholly or in part, which, when completed and connected, will form in the whole or in the main one continuous line of railroad, are hereby authorized to consolidate in the whole or in the main, and form one company owning and controlling such continuous line of road, with all the powers, rights, privileges and immunities, and subject to all the obligations and liabilities to the State, or otherwise, which belonged to or rested upon either of the companies making such consolidation. In order to accomplish such consolidation, the companies interested may enter into contract fixing the terms and conditions thereof, which shall first be ratified and approved by a majority in interest of all the stock held in each company or road proposing to consolidate, at a

meeting of the stockholders regularly called for the purpose or by the approval, in writing, of the persons or parties holding and representing a majority of such stock. A certified copy of such articles of agreement with the corporate name to be assumed by the new company, shall be filed with the secretary of state, when the consolidation shall be considered duly consummated, and a certified copy from the office of the Secretary of State shall be deemed conclusive evidence thereof. The board of directors of the several companies may then proceed to carry out such contract, according to its provisions, calling in the certificates of stock then outstanding in the several companies or roads, and issuing certificates of stock in the new consolidated company, under such corporate name as may have been adopted; provided, however, that the foregoing provisions of this section shall not be construed to authorize the consolidation of any railroad companies or roads, except when by such consolidation a continuous line of road is secured, running in the whole or in the main in the same general direction; and provided, it shall not be lawful for said roads to consolidate, in whole, or in part, when by so doing it will deprive the public of the benefit of competition between said roads. And in case any such railroad companies shall consolidate or attempt to consolidate their roads contrary to the provision of this act, such consolidation shall be void, and any person or party aggrieved, whether stockholders or not, may bring action against them in the Circuit Court of any county through which such road may pass, which court shall have jurisdiction in the case, and power to restrain by injunction or otherwise. And in case any railroad in this state shall hereafter intersect any such consolidated road, said road or roads shall have the right to run their freight cars without breaking bulk upon said consolidated road, and such consolidated road shall transact the business of said intersecting or con-

necting road or roads on fair and reasonable terms, and the same may be enforced by appropriate legislation. Before any railroad companies shall consolidate their roads, under the provisions of this act, they shall each file with the Secretary of State a resolution accepting the provisions thereof, to be signed by their respective presidents, and attested by their respective secretaries, under the seal of their respective companies, which resolution shall have been passed by a majority vote of the stock of each at a meeting of the stockholders thereof, to be called for the purpose of considering the same.

SEC. 2. That the said chapter is hereby amended by adding thereto an additional section, to-wit 'Section 52. Any railroad company heretofore incorporated or hereafter organized in pursuance of law, may, at any time, by means of subscription to the capital stock of any other railroad company, or otherwise, aid such company in the construction of its railroad within or without the state, for the purpose of forming a connection of the last mentioned road with the road owned by the company furnishing such aid; or any such railroad company which may have built its road to the boundary line of the state, may extend into the adjoining state, and for that purpose may build or buy, or lease a railroad in such adjoining state and operate the same, and may own such real estate and other property in such adjoining state as may be convenient in operating such road; or any railroad company organized in pursuance of the laws of this or any other state, or of the United States, may lease or purchase all or any part of a railroad *with all of its privileges, rights, franchises, real estate and other property*, the whole or a part of which is in this state and constructed, owned or leased by any other company, if the lines of the road or roads of said companies are continuous or connected at a point either within or without this state, upon such terms as may be agreed upon

between said companies respectively, *or any railroad company, duly incorporated and existing under the laws of an adjoining state, or of the United States, may extend, construct, maintain and operate its railroad into and through this state, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this state upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and provisions of the laws of this state concerning railroad corporations as fully as if incorporated in this state;* provided, that no such aid shall be furnished, nor any purchase, lease, sub-letting, or arrangements perfected until a meeting of the stockholders of said company or companies of this state, party or parties to such agreement, whereby a ralroad in this state may be aided, purhcased, leased sub-let or affected by such arrangement shall have been called by the directors thereof, at such time and place, and in such manner as they shall designate, and the holders of a majority of the stock of such company, in person, or by proxy, shall have assented thereto, or until the holders of a majority of the stock of such company shall have assented thereto in writing and a certificate thereof signed by the president and secretary of said company or companies, shall have been filed in the office of the Secretary of State; and provided further, that if a railroad company of another state shall lease a railroad, the whole or a part of which is in the state, or make arrangements for operating the same, as provided in this act, or shall extend its raliroad into this state or through this state, such part of said railroad as is within this state shall be subject to taxation, and shall be subject to all regulations and provisions of law governing railroads in this state, and a corporation in this state leasing its road to a corporation of another state, shall remain liable as if it operated the road itself; *and a corporation of another state being the lessee*

of a railroad in this state, shall likewise be held liable for the violation of any of the laws of this state, and may sue and be sued, in all cases and for the same causes, and in the same manner as a corporation of this state might sue or be sued, if operating its own road; but a satisfaction of any claim or judgment by either of said corporations, shall discharge the other; and a corporation of another state being the lessee, as aforesaid, or extending its railroad, as aforesaid, into or through this state, shall establish and maintain an office or offices in this state, at some point or points on the line of the roads so leased or constructed and operated, at which legal process and notice may be served as upon railroad corporations of this state.

SEC. 3. Section twenty-two of the chapter aforesaid shall be amended to read as follows: 'Section 22. Any county court, city council or trustees of any town refusing to perform any of the duties required of them by this chapter, may be proceeded against by writ of mandamus, to be sued out of the Circuit court of the county.'

SEC. 4. Any railroad company in this state shall have the right to take and hold all necessary grounds for depots and sidetracks, and if the title thereto cannot be secured by agreement with the owners thereof, or if from any other cause the title may not be secured such company may proceed to condemn the same in the same manner and with the same effect as is now provided by chapter sixty-six of the General Statutes of the State of Missouri, entitled: 'Of the appropriation and valuation of lands taken for telegraph, macadamized, graded, plank and railroad purposes,' and of any act amendatory thereof.

SEC. 5. Section twelve of the chapter aforesaid is hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage."

Approved March 24th, 1870.

And your orator further alleges that the aforesaid line of railway (*b*) extending from Edgerton Junction situated on the Chicago and Southwestern Railway in the said County of Platte, to a point on the bank of the Missouri River in the said County of Buchanan opposite the said city of Atchison, in Atchison County, Kansas, was constructed and completed by the aforesaid Chicago and Southwestern Railway Company in the year 1872, after the aforesaid Chicago and Southwestern Railway Company, the consolidated corporation of Missouri and Iowa had been consolidated on August 16, 1871, with "The Atchison Branch of the Chicago and Southwestern Railway," a corporation organized on November 25th, 1870, under the laws of the State of Missouri, to construct a railway "from a point on the Chicago and Southwestern Railway in the city of Plattsburg, county of Clinton, in the State of Missouri, to a point on the Missouri River in Buchanan County, Missouri, opposite the city of Atchison and in the State of Kansas."

And your orator further alleges that the Chicago, Rock Island and Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa, guaranteed the bonds of the said Chicago and Southwestern Railway Company, and entered into a perpetual agreement

and lease with said roads, and in pursuance thereof took charge of and operated said lines of railway; that the interest on the said bonds was never earned or paid, and under and by virtue of the said agreement with the said The Chicago, Rock Island and Pacific Railroad Company, the mortgages were foreclosed and the property of the said Chicago and Southwestern Railway Company sold at judicial sale, and in strict compliance with the provision of the laws of the State of Missouri, to the Iowa Southern and Missouri Northern Railroad Company, a corporation organized on August 29th, 1876, under and by virtue of the laws of the State of Iowa, for the purpose of "The purchase, improvement, (by construction of a double track and otherwise) maintenance and operation of the railway now known as the main line of the Chicago and Southwestern Railway, etc."

And your orator further alleges that the aforesaid The Chicago, Rock Island and Pacific Railroad Company, organized and existing, as aforesaid, under and by virtue of the laws of the States of Illinois and Iowa, was on the 2nd day of June 1880 consolidated with among other railway corporations of the State of Iowa, the aforesaid railway company, the Iowa Southern and Missouri Northern Railroad Company, a corporation organized and existing, as aforesaid,

under and by virtue of the laws of the State of Iowa, said consolidated corporation becoming a consolidated corporation of the States of Illinois and Iowa, and its name being changed to The Chicago, Rock Island and Pacific Railway Company. Said consolidations was approved by the stockholders of all the constituent companies, and each of the parties thereto did respectively and severally grant, bargain, sell, release, convey, assign, transfer and set over unto The Chicago, Rock Island and Pacific Railway Company, the consolidated corporation thereby created, the several and respective railroads, railroad lands, rights of way, stations, station grounds, lands, lots, bridges, cars, locomotives, rolling stock, tools, machinery, fuel, timber, iron, stone, materials and goods and chattels; and all and singular the several and respective bonds, bills, notes, accounts, demands, money and things in action; and all and singular their several and respective estates, property and effects, real and personal, movable and immovable, wheresoever, howsoever and by whomsoever held; and all and singular the several and respective corporate and other franchises, rights, privileges and immunities; and did mutually agree and declare that the same should from the execution of the said articles of consolidation be held and possessed by the said consolidated corporation, its successors and assigns, forever,

to and for its own use, benefit and behoof forever, to all intents and purposes.

And your orator further alleges that the aforesaid consolidated corporation, The Chicago, Rock Island and Pacific Railway Company, and your orator are one and the same corporation, and that since the said 2nd day of June, 1880, your orator has continuously and does now own, maintain, operate and control all of the aforesaid lines of railway situated within the State of Missouri, used as aforesaid in the transporation of both state and interstate commerce, as heretofore set forth.

And your orator further alleges that the aforesaid lines of railway (*c*) and (*d*) running from Altamont, aforesaid, to Saint Joseph, aforesaid, and from the said City of Saint Joseph, aforesaid, to the town of Rushville, aforesaid, were consolidated and completed during the years 1885 and 1886, by The Saint Joseph and Iowa Railroad Company, a railroad corporation incorporated by the Legislature of the State of Missouri, by acts approved January 22nd, 1857, February 23rd, 1853; February 24th, 1853, November 5th, 1857, and March 19th, 1866.

And your orator further alleges that previous to the construction of the last mentioned lines of railway the Legislature of the State of Missouri had passed

an act approved on March 26th, 1881, which was a subsisting and binding law at the time of said construction, which statute was as follows:

"An Act to Amend Section Seven Hundred and Ninety, Chapter 21, Article 2 of the Revised Statutes of the State of Missouri, Entitled 'Railroad Companies.' Be it enacted by the General Assembly of the State of Missouri as follows:

SECTION 1. Section seven hundred and ninety of the Revised Statutes of the State of Missouri, is hereby amended by striking out the words 'and adjoining,' in the twenty-first line of said section, and inserting in lieu thereof the word 'any'; and such section, as so amended, shall read as follows, viz:

SEC. 790. MAY AID CONSTRUCTION OF OTHER ROADS. Any railroad company heretofore incorporated or hereafter organized in pursuance of law, may at any time, by means of subscription to the capital stock of any other railroad company, or otherwise, aid such company in the construction of its railroad within or without the state, for the purpose of forming a connection of the last mentioned road with the road owned by the company furnishing such aid; or any such railroad company which may have built its road to the boundary line of the state, may extend into the adjoining state, and for that purpose may build, buy, lease or consolidate in the manner provided in the preceding section, with any railroads in such adjoining state and operate the same, and may own such real estate and other property in such adjoining state as may be convenient in operating such road; or any railroad company organized in pursuance of the laws of this or any other state, or of the United States, *may lease or purchase all or any part of a railroad, with all of its privileges, rights, franchises, real estate and other property*, the whole or a part of which is in this state, and constructed, owned or leased by any

other company, if the lines of the road or roads of said companies are continuous or connected at a point either within or without this state, upon such terms as may be agreed upon between said companies respectively; *or any railroad company, duly incorporated and existing under the laws of any state of the United States, may extend, construct, maintain and operate its railroad into and through this state, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this state, upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and provisions of the laws of this state, concerning railroad corporations, as fully as if incorporated in this state;* provided, that no such aid shall be furnished, nor any purchase, lease, sub-letting or arrangements perfected, until a meeting of the stockholders of said company or companies of this state, party or parties to such agreement, whereby a railroad in this state may be aided, purchased, leased, sub-let, consolidated or affected by such arrangement, shall have been called by the directors thereof, at such time and place, and in such manner as they shall designate, sixty days' public notice thereof having been previously given, and the holders of a majority of the stock of such company, in person or by proxy, shall have assented thereto, or until the holders of a majority of the stock of such company shall have assented thereto in writing, and a certificate thereof, signed by the president and secretary of said company or companies, shall have been filed in the office of the Secretary of State: And provided further, that if a railroad company of another state shall lease a railroad, the whole or part of which is in this state, or make arrangements for operating the same, as provided in this act, or shall extend its railroad into this state, or through this state, such part of said railroad as is within this state, shall be subject to taxation, and shall be subject to all regula-

tions and provisions of law governing railroads in this state; and a corporatoin in this state leasing its road to a corporation of another state shall remain liable as if it operated the road itself; and a corporation of another state being the lessee of a railroad in this state, shall likewise be held liable for the violation of any of the laws of this state, *and may sue and be sued, in all cases and for the same causes, and in the same manner, as a corporation of this state might* sue or be sued, if operating its own road; but a satisfaction of any claim or judgment by either of said corporations shall discharge the other; and a corporation of another state being the lessee as aforesaid, or extending its railroad as aforesaid into or through this state, shall establish and maintain an office or offices in this state, at some point or points on the line of the road so leased or constructed and operated, at which legal process and notice may be served as upon railroad corporations of this state.

Approved March 26, 1881."

And your orator further alleges that upon the completion of the aforesaid lines of railway by The Saint Joseph and Iowa Railroad Company, aforesaid, and on the 1st day of July 1885, the said The Saint Joseph and Iowa Railroad Company, entered into a traffic and operating agreement with your orator, The Chicago, Rock Island and Pacific Railway Company, for the operation and control of the said lines of railway; that on the 29th day of December, 1888, your orator The Chicago, Rock Island and Pacific Railway Company purchased of the said The Saint Joseph and Iowa Railroad Company and the said The Saint

Joseph and Iowa Railroad Company, under and in full compliance with the laws of the State of Missouri, granted, bargained, sold, assigned, conveyed and transferred to your orator, The Chicago, Rock Island and Pacific Railway Company, its successors or assigns, all and singular the rights, franchises, powers, privileges and immunities possessed by it, together with all and singular the railway of the said The Saint Joseph and Iowa Railroad Company in the State of Missouri, being the aforesaid lines of railway extending from the said town of Altamont in Daviess County, Missouri, to the said City of Saint Joseph in Buchanan County, Missouri, and from said City of Saint Joseph to the said town of Rushville, in said Buchanan County, Missouri, including, also, all the railway, rights of way, depot grounds and all lands used in connection with the operation and maintenance of said railway, and all tracks, bridges, viaducts, culverts, fences, and other structures and equipment; and that continuously since the said 29th day of December, 1888, up to an including the present time, your orator has been the owner of said lines of railway and has controlled, managed and operated the same during all of said period, and does now own, control, manage and operate all of the aforesaid lines of railway situated within the State of Missouri, as aforesaid, and used

in the transportation of both state and interstate commerce, as heretofore set forth.

And your orator further alleges that it has various other lines of railway within the State of Missouri, which it controlled and owned prior to the 1st day of March, 1907.

And your orator further alleges that of the lines of railway maintained and operated by your orator in the transaction of its business as a common carrier of state and interstate commerce, those from Chicago and from the States of Illinois, Iowa, Minnesota, South Dakota and Wisconsin connect with the aforesaid lines of railway maintained and owned by your orator in the State of Missouri, at the said town of Lineville in said County of Wayne and State of Iowa; and that at the said cities of Saint Joseph and Kansas City in the counties of Buchanan and Jackson respectively in the said State of Missouri, the aforesaid lines of railway maintained and owned by your orator in the State of Missouri, connect and form through lines of railway with the lines of railway maintained and owned by your orator in the States of Kansas, Nebraska, Colorado, Arkansas, Tennessee, Louisiana, Oklahoma and Indian Territories.

And your orator further alleges that having theretofore filed with the Secretary of State of the

State of Missouri a copy of the Articles or Charter of Incorporation, duly authenticated by the proper authority, and having fully complied with all the provisions of an Act of the Legislature of the State of Missouri, entitled:

"An Act to amend section 2 of an act entitled 'An act to require every foreign corporation doing business in this state to have a public office or place of business in this state, at which to transact business, subjecting it to certain conditions, and requiring it to file its articles or charter of incorporation with the Secretary of State, and to pay certain taxes and fees', approved April 21, 1891."

Approved March 11, 1895.

Sam B. Cook then duly elected and acting Secretary of State of the State of Missouri, on the 22nd day of November, 1902, duly issued and delivered to your orator a certificate that it has duly complied with the laws of the State of Missouri, and that it is authorized to do business therein, and that said certificate has never been cancelled or withdrawn, and that it is now in full force and effect, and that it is in the words and figures following, towit:

WHEREAS, the Chicago, Rock Island and Pacific Railway Company, incorporated under the laws of the States of Illinois and Iowa, has filed in the office of the Secretary of State, duly authenticated evidence of its incorporation, as provided by law, and has, in all respects compiled with the requirements of law governing Foreign Private Corporations.

NOW, THEREFORE, I, Samuel B. Cook, Secretary

of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said Chicago, Rock Island and Pacific Railway Company is from the date hereof duly authorized and licensed to do business in the State of Missouri for a term ending June 3rd, 1930, and is entitled to all the rights and privileges granted to Foreign Corporations under the laws of this State, and that the amount of the capital stock of said Corporation is Seventy Five Million Dollars, and the amount of said capital stock represented in the State of Missouri is Eight Million Dollars, Three Million of which were invested in Missouri prior to April 21st, 1891.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the great seal of the State of Missouri.

Done at the City of Jefferson, this 22nd day of November, A. D., Nineteen Hundred Two.

SAM. B. COOK,
Secretary of State.

(SEAL.)

By J. H. EDWARDS,
Chief Clerk.

SECOND.

Your orator further alleges that this cause arises under the Constitution and laws of the United States, as hereinafter more particularly stated, and your orator further alleges that this action is of a civil nature, and that it involves a controversy between citizens of different states, and that the matter in dispute in said controversy exceeds, exclusive of interest and costs the sum and value of two thousand dollars.

THIRD.

Your orator further alleges that the defendant,

Harry T. Herndon, is the duly elected and qualified Prosecuting Attorney of the County of Clinton in the State of Missouri, and is a citizen and resident of said Clinton County, Missouri, and of the Western District thereof; that the defendant John E. Swanger, is the elected and qualified Secretary of State of the State of Missouri, and a citizen and resident of Sullivan County, and State of Missouri, and of the Western District thereof. Neither of said defendants is a citizen or resident of the State of Illinois nor the State of Iowa.

FOURTH.

Your orator further alleges that at the regular session of the 1907 Session of the Legislature of the State of Missouri, the following law was passed by the said Legislature and approved March 19th, 1907. Said law contained an emergency provision making it effective from and after its passage:

"Be it Enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That section 1075 of article 2, chapter 12 of the Revised Statutes of Missouri, 1899, as amended by the session acts of 1905, at pages 107 and 108, approved April 17, 1905, be and the same is hereby repealed, and a new section enacted in lieu thereof, to be known as section 1075, and relating to railroad companies, and which shall read as follows:

SEC. 1075. Every railroad corporation in this state which now is, or may hereafter be, engaged in

the transportation of persons or property, from one point in this state to another point in this state, shall give, public notice of the regular time of starting and running its cars, and shall furnish sufficient accommodations for the transportation of all such passengers, baggage, mails and express freight as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting, at the junctions of other railroads, and at the junction of branch railroads of the same system as herein defined, carrying passengers, and at the several stopping places; and shall, at all crossings, and intersections of other railroads, where such other railroad and the railroad crossing the same are now, or may hereafter be made upon the same grade, and the character of the land at such crossing or intersection will admit of the same, erect, build and maintain, either jointly with the railroad company whose road is crossed, or separately by each railroad company, a depot or passenger house and waiting room or rooms sufficient to comfortably accommodate all passengers awaiting the arrival and departure of trains at such junction or railroad crossings, and shall keep such depot or passenger house or rooms warm, lighted and open to the ingress and egress of all passengers for a reasonable time before the arrival and until after the departure of all trains carrying passengers on said railroad or railroads; *and they are hereby required to stop all trains carrying passengers at the junction or intersection of other railroads,* and they are further required to receive all passengers and baggage for, and to stop, on a flag or signal all trains carrying passengers, at the junction of all branch railroads of the same system which said branch railroads are eighteen miles or more in length and at the terminus of which is located any county seat town of any county in this state a sufficient length of time to allow the transfer of passengers, personal baggage, mails and express freight from the

trains of railroads so connecting or intersecting; or they may mutually arrange for the transportation of such persons and property over both roads without change of cars; and they shall be compelled to receive all passengers and freight from such connecting, intersecting or branch roads whenever the same shall be delivered to them. And every railroad company or corporation owning, operating or leasing any railroad in this state shall keep all its depots, stations or passenger houses, whether located at the crossing or intersection of other roads or elsewhere, warm, lighted and open to the ingress and egress of all passengers a reasonable time before the arrival and until after the departure of all passenger trains on said railroad which stop or receive or discharge passengers at such depots, stations or passenger houses. Every railroad corporation or company which shall fail, neglect or refuse to comply with any or either one of the provisions of this section from and after the time the same shall become a law, shall, for each day said railroad corporation or company refuses, neglects or fails to comply therewith, shall forfeit and pay the sum of twenty-five dollars, which may be recovered in the name of the state of Missouri, to the use of the school fund of the county wherein said crossing, depot, station, passenger house or branch railroad is located; and it shall be the duty of the prosecuting attorney to prosecute for a recovery of the same. The term 'Railroad corporations,' as used in this act, shall include the term, 'Railway company and railway corporation.'

SEC. 2. Inasmuch as the train service is very inconvenient and unsatisfactory in some places, constitutes an emergency within the meaning of the Constitution; therefore, this act shall take effect and be in force from and after its passage."

Your orator further alleges that at the same session of the Legislature of the State of Missouri, the said Legislature passed the following act, which was approved March 13th, 1907, and became effective June 14th, 1907:

"Be it enacted by the General Assembly of the State of Missouri as follows:

SECTION 1. If any foreign or non-resident railway corporation of whatever kind, incorporated, created and existing under the laws of any other state, territory or country, and doing business as a carrier of freight or passengers from one point in this state, to another point in this state, under the laws of this state, regulating or authorizing the licensing of, or the issuing of a permit or a certificate of authority to, or suffering or allowing any such corporation to enter or to do business in this state, shall, without the consent of the other party, in writing, to any suit or proceeding, brought by or against it in any court of this state, remove said suit or proceeding to any federal court, or shall institute any suit or proceeding against any citizen of this state in any federal court, the license, permit, certificate of authority and all right of such corporation and its agents to carry passengers or freight from one point in this state to another point in this state shall forthwith be revoked by the secretary of state, and its right to do such business shall cease, and the secretary of state shall publish such revocation in some newspaper of large and general circulation in the state, and such corporation shall not again be authorized or permitted to carry passengers or freight from one point in this state to another point in this state or to do business as a carrier of passengers or freight of any kind from one point in this state to another point in this state at any time

within five years from the date of such revocation or the cessation of such right. But the revocation of such license, permit, right, certificate of authority, or the cessation of such right, shall not be deemed to prohibit or prevent such corporation from carrying passengers or freight from a point within this state to a point without this state, or from a point without this state to a point within this state, or from makng what are known as interstate shipments and transportation.

SEC. 2. If any corporation included in the provisions of this act shall carry, or attempt to carry, or hold itself out to carry passengers or freight of any kind from one point in this state to another point in this state, without a license, permit or certificate of authority therefor first had and obtained from the state of Missouri—to be issued by the secretary of state—or after its license, permit, right or certificate of authority to carry passengers or freight of any kind from one point in this state to another point in this state, shall have been revoked or ceased, as provided for by the preceding section of this act, it shall forfeit and pay to the state of Missouri for each offense a penalty of not less than two thousand dollars nor more than ten thousand dollars, suit to be brought therefor in any court of competent jurisdiction by the attorney-general, or the prosecuting attorney of any county in the state in which such offense shall have been committed; and such offense shall be deemed to have been committed either in the county where such transportation originated or in the county where it terminated. And the governor may, whenever he shall deem it necessary, appoint special counsel to assist the attorney-general or any prosecuting attorney to enforce or carry out the provisions of this act.

SEC. 3. All acts or parts of acts in conflict herewith are, in so far as they are in conflict, hereby repealed."

And your orator further alleges that both of said defendants are by the aforesaid laws required to do and perform certain special duties with respect thereto.

FIFTH.

Your orator further alleges that on the 1st day of January, 1905, it entered into the agreement heretofore mentioned with the Chicago, Burlington and Quincy Railway Company, and the Chicago, Burlington and Quincy Railroad Company, providing for the trackage rights of your orator over the tracks of the Chicago, Burlington and Quincy Railway Company between Cameron Junction and Kansas City, aforesaid; that by the terms of said agreement your orator acquired the right for a long term of years not only of running its trains over the tracks of the said the Chicago, Burlington and Quincy Railway Company between Cameron Junction and Kansas City, aforesaid, but, with certain exceptions regarding express business, the full and unrestricted right to do all business of a common carrier at any and all points upon and over said joint property and the right to run, operate and manage its trains, locomotives and cars of all classes in the conduct of its business as a common carrier in common with the said the Chicago, Burlington and Quincy Railway Company; that the

town of Lathrop is a town of about 1,000 inhabitants, and is situated in Clinton County, Missouri, upon the aforesaid line of railway running between Cameron Junction and Kansas City; that your orator under and by virtue of the aforesaid agreement of January 1st, 1905, has the right to do and does do all the business of a common carrier at the said station of Lathrop, and there receives and delivers both freight and passengers from or to all points on its system; that your orator for the purpose of caring for its business as a common carrier at the said station of Lathrop stops a morning and an evening passenger train each way every day at said station—No. 261 and No. 201 both westbound arriving at Lathrop at 6:28 A. M. and 6:33 P. M. respectively, and No. 202 and No. 262, both eastbound arriving at Lathrop at 9:50 A. M. and 7:00 P. M. respectively. In addition to the foregoing passenger trains, your orator stops trains No. 984, eastbound, and No. 985, westbound, which are local freight trains regularly carrying passengers, and arriving at the said station of Lathrop at 2:27 P. M. and 9:40 P. M. respectively. Your orator further shows to the Court that it runs a fast through passenger train between Chicago and Fort Worth and Dallas, Texas, No. 211 and No. 212, by means of its connecting carriers in the State of Texas, and a fast through passenger

train between Chicago and the Pacific Coast, No. 203 and No. 204, by means of connecting carriers beyond the Territory of Oklahoma, neither of which stop at the said station of Lathrop to take on or to let off passengers; that said trains No. 211 and 212, which do not stop at the said station of Lathrop, are immediately preceded by the said trains, No. 261 and No. 262, which do stop at the said station of Lathrop, and which are maintained for the express purpose of collecting passengers from local stations and conveying them to nearby station on the lines of railway of your orator where both of said fast through trains Nos. 203, 204, 211 and 212 do stop for the purpose of taking on and letting off passengers.

And your orator further shows to the Court that the tracks of The Atchison, Topeka and Santa Fe Railway Company cross and intersect the tracks of the Chicago, Burlington and Quincy Railway Company at the said station of Lathrop; that the said The Atchison, Topeka and Santa Fe Railway Company runs two trains each way each day upon its line of railway all of which stop at the said station of Lathrop, and all of which make close and direct connection with the aforesaid trains which your orator stops at the said station of Lathrop; that except under unusual circumstances passengers seldom find it convenient to change

from the railway of your orator to that of The Atchison, Topeka and Santa Fe Railway Company at the said station of Lathrop.

And your orator further shows to the Court that to stop all of its aforesaid trains at the said station of Lathrop for the purpose of letting on and putting off passengers would be a direct, unreasonable and unwarranted interference with the interstate business of your orator, and with the aforesaid trains running between Chicago and Fort Worth and Dallas, and between Chicago and the Pacific Coast, respectively, which trains are maintained primarily for the purpose of transporting the interstate passenger traffic of your orator, and for the carriage of the United States mails.

SIXTH.

Your orator further alleges that the aforesaid act of March 19th, 1907, was passed with the exclusive purpose of providing for and regulating the interchange of freight and passengers at railroad junction points, and for the express purpose of providing more convenient and satisfactory train service upon all railroads situated within the State of Missouri. Your orator further alleges that the facilities for the interchange of passengers at the said station of Lathrop, are amply sufficient to accommodate the public, and that

its train service at said station is both convenient and satisfactory to the public.

Your orator further alleges that its aforesaid trains which stop at the said station of Lathrop afford the public every reasonable opportunity of changing to or from the aforesaid trains of The Atchison, Topeka and Santa Fe Railway Company at the said station of Lathrop; that the stopping of all the aforesaid trains by your orator at the said station of Lathrop would not practically or materially increase the facilities for the interchange of passengers between the trains of your orator and those of the aforesaid, The Atchison, Topeka and Santa Fe Railway Company at said station; that any requirement by which your orator is compelled to stop its two trains at the said station of Lathrop, so primarily maintained as aforesaid in the transportation of passengers from Chicago to Fort Worth and Dallas and return, and from Chicago to the Pacific Coast and return, would be an unreasonable interference with and an unjust burden upon the interstate commerce of your orator so as aforesaid transported by said trains; that the said trains which your orator does not stop at the said station of Lathrop would not and could not be maintained by your orator but for the transportation of interstate passengers who patronize said trains because of the rapid and unbroken

schedules maintained by said trains; that if said trains are required to stop at all junctions with other railways and there interchange passengers with such other roads, their usefulness as through trains would be destroyed and the interstate business of your orator would be interferred with to an unwarranted extent without any corresponding benefit to the traveling public; and that the aforesaid law of March 19, 1907, so far as it applies to the aforesaid trains of your orator which do not stop at the said station of Lathrop, is a serious burden upon the interstate commerce of your orator so transported by said trains, and an unreasonable, unlawful and unjust interference with said interstate commerce.

And your orator further alleges that that portion of the aforesaid act of March 19th, 1907, which requires all trains carrying passengers to stop at the junction or intersection of other railroads for the purpose of the interchange of passengers and baggage at such junction points is in violation of and contrary to the Act of Congress entitled, "And Act to Amend an Act entitled 'An Act to Regulate Commerce,' approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof, and to enlarge the Power of the Interstate Commerce Commission, approved June 29th, 1906," authorized by that portion of

section eight of the Constitution of the United States giving Congress "the power to regulate commerce with foreign nations and among the several states, and with the Indian Tribes." Your orator shows to the Court that said act to regulate the interstate commerce of the United States applies in terms to and assumes exclusive jurisdiction over all tracks and facilities of every kind used or necessary in the transportation of persons and property moving in interstate commerce, and over all rules and regulations directly and materially affecting the transportation of persons and property moving in interstate commerce. And your orator submits that forasmuch as the Constitution of the United States and the laws passed in pursuance thereof have committed to Congress and its authorized Commission the exclusive power to regulate commerce among the states and to supervise and control the instrumentalities of such commerce and withdrawn the same from every degree of interference on the part of any state or any state law, or official, the said law of March 19, 1907, so far as it requires all trains carrying passengers to stop at the junction or intersection of other railroads for the purpose of the interchange of passengers and baggage at such junction points, interfering therewith, is repugnant to said Constitution and the laws passed in pursuance thereof, and is therefore,

to such extent, null and void.

SEVENTH.

Your orator further alleges that that portion of the aforesaid law of March 19th, 1907, which requires all trains carrying passengers to stop at the junction or intersection of other railroads for the purpose of the interchange of passengers and baggage at such junction points, was not passed as an exercise of the police power of the State of Missouri for the protection of the traveling public from the danger of collisions at such junction points, but solely, as aforesaid, for the purpose of increasing the facilities for the interchange of passengers and baggage, and for the more convenient and satisfactory train service at such junction points. Your orator shows to the Court, however, that on or about the 7th day of April, 1907, an interlocking plant and automatic signal device was completed and put in operation at intersection of the tracks of the Chicago, Burlington and Quincy Railway Company with the tracks of The Atchison, Topeka, and Santa Fe Railway Company at the said station of Lathrop, which provides an absolutely safe method and way for your orator's trains to pass over the tracks of The Atchison, Topeka and Santa Fe Railway Company without stopping. And your orator further alleges that said interlocking plant and automatic signal device

is properly and carefully constructed according to a recognized standard which is in universal use for such purposes throughout the country; that by the use of said interlocking plant and automatic signal device, the trains of your orator are operated over and across the tracks of said The Atchison, Topeka and Santa Fe Railway Company at the said station of Lathrop, with greater safety and security to the traveling public when said trains are not stopped at said point of intersection than if said trains were stopped thereat.

EIGHTH.

Your orator further alleges that ever since the passage of the aforesaid law of March 19, 1907, the defendant, Harry T. Herndon, as prosecuting attorney of Clinton County, Missouri, in which county the said station of Lathrop and the aforesaid crossing and junction is located, and particularly since July 21st, 1907, has threatened, and still threatens, to prosecute your orator under said statute for the purpose of recovering the penalty of $25.00 per day for each day since the said 21st day of July, 1907, upon which your orator has operated some of its trains past the said station of Lathrop, and past the junction point with the said The Atchison, Topeka and Santa Fe Railway Company without stopping said trains for the interchange of passengers and baggage. Said Harry T.

Herndon as prosecuting attorney of said Clinton County, proposes, threatens to, and will, unless enjoined herein, put in motion the special provisions of the said law of March 19th, 1907, for the enforcement of the said penalties of $25.00 per day since July 21st, 1907, and, under the pain of these accumulating penalties, which in a short space of time will amount to many thousands of dollars, will, unless enjoined herein, bring suits against your orator to collect said penalties unless your orator sacrifices the facilities it now maintains, and which circumstances compel it to maintain for the proper handling of its interstate business. And your orator shows to the Court that, as heretofore set forth, it has not stopped all of its trains carrying passengers at the said station of Lathrop, in compliance with the aforesaid law of March 19th, 1907. If your orator was compelled to stop all of its trains carrying passengers at the said station of Lathrop, and at other similar junction points in the State of Missouri, in compliance with said law, your orator could not expect to secure the interstate traffic which is now carried on said passenger trains which do not stop at the said station of Lathrop, to carry such interstate traffic said trains were installed and are now maintained; and without such interstate traffic which it now carries on said trains by reason of their rapid

unbroken schedules, said trains could be operated not only without profit, but at a loss and without any return upon the proportion of said investment within the State of Missouri, all of which is contrary to and violative of the provisions of the Constitution of the United States, and particularly of the Fourteenth Amendment thereto, prohibiting the taking of property without due process of law and guaranteeing to all persons the equal protection of the laws.

Your orator submits that while it may, having regard to circumstances, operate a train at a loss or render such service under a fair profit therefor, yet the Legislature of the State of Missouri cannot, and the prosecuting attorney for any county in the said State of Missouri cannot compel your orator to do so, that being the taking of your orator's property for public use without returning compensation therefor, and without due process of law, and it being impossible for said Legislature of the State of Missouri, or the prosecuting attorney for any county in the said State of Missouri to assure to your orator profit on some other service which will answer and make up such deficiency.

NINTH.

Your orator alleges that under its contract with the Government of the United States for the carriage

of United States mails, it is obliged to transport said mail on the aforesaid trains which your orator does not stop at the said station of Lathrop; and that unless the defendant Harry T. Herndon, as prosecuting attorney for Clinton County, Missouri, is restrained herein, he will, by the imposition of said penalties, require your orator to stop said trains; and that said delay consequent upon the stopping of said trains will unreasonably hinder, delay and obstruct the carriage and delivery of the United States mails so carried by your orator, contrary to the Constitution of the United States and the laws passed in pursuance thereof.

TENTH.

Your orator further alleges that the defendant John E. Swanger, as Secretary of State of the State of Missouri, under and by virtue of the alleged authority in him vested, as such Secretary of State of the State of Missouri, by the terms of the aforesaid act of the Legislature of the State of Missouri, approved March 13, 1907, and which becomes effective June 14th, 1907, proposes, threatens to and will unless enjoined herein take such steps as provided in said act last aforesaid to revoke and cancel the certificate granting your orator the right to do business in the State of Missouri, issued by Sam B. Cook, as Secretary of State on the 22nd day of November, 1902, as hereinbefore stated, and to

publish such revocation in some newspaper of general circulation of the state and to do all such further acts as it may be necessary to revoke said license, permit or certificate of authority as are authorized by said Act of the Legislature of the State of Missouri, approved March 13, 1907, should your orator file this, its Bill of Complaint before this Honorable Court, the Circuit Court of the United States for the Western District of Missouri and the St. Joseph Division thereof, the same being a suit or proceeding instituted in a Federal Court of the United States against the defendant Harry T. Herndon and John E. Swanger, citizens of the State of Missouri. Your orator shows to the Court that acting under, by virtue of and fully within the rights and privileges guaranteed unto your orator by the Constitution of the United States and the laws passed in pursuance thereof, it hereby files its said Bill of Complaint before this Honorable Court praying for the aforesaid injunction against the defendant Harry T. Herndon, as prosecuting attorney of Clinton County, Missouri, and a resident and citizen of said County of Clinton and State of Missouri, and against John E. Swanger, as Secretary of State of the State of Missouri and a resident and citizen of said County of Sullivan and State of Missouri. And your orator further alleges that because of the filing of

said Bill of Complaint, and because of any other proceeding which your orator may bring in any Federal Court against any citizen of the State of Missouri, and because of any attempt your orator may make to remove any case into a Federal Court from any State Court of the State of Missouri, and by virtue of the alleged authority attempted to be given the defendant John E. Swanger as Secretary of State of the State of Missouri by the aforesaid law of March 13th, 1907, said defendant John E. Swanger is now threatening to, and unless enjoined herein, by this Honorable Court, will, so far as in his power lays, revoke all authority of your orator to do business in the State of Missouri and take away the right of your orator or its agents to carry passengers or freight between points within the State of Missouri, and to deprive your orator of the use and benefit of its property permanently devoted, under invitation and contract with the said State of Missouri, to the transportation of both state and interstate business within the said State of Missouri.

ELEVENTH.

Your orator further alleges that pursuant to the then existing laws of the State of Missouri, as heretofore set forth, and for the purpose of availing itself of the rights, privileges and immunities therein guar-

anteed and for the purpose of accepting the proffered terms thereof, your orator and its predecessors, after having fully and without reservation complied with the aforesaid laws of the State of Missouri, became authorized to do all of the things enumerated therein. And your orator shows to the Court that in pursuance of said invitation from the State of Missouri and in full compliance with its then existing laws, your orator and its predecessors lawfully and in good faith acquired the lines of railway heretofore mentioned and set forth. And your orator alleges that by reason of the matters and things herein alleged the State of Missouri entered into a valid, binding and subsisting contract with your orator whereby the said State of Missouri guaranteed to your orator the rights, privileges and immunities set forth in the constitution and laws of the State of Missouri, upon the same basis and to an extent identical with the rights, privileges and immunities given by said constitution and laws to railway corporatoins of the state of Missouri, and your orator and its predecessors agreed and undertook to construct and acquire the aforesaid lines of railway within the State of Missouri, and to provide facilities for and fully engage in both the state and interstate business of a common carrier of freight and passengers within the said State of Missouri. And your orator

alleges that it and its predecessors did in good faith, and at the expenditure of thousands of dollars, accept the said invitation and the proffered agreement of the said State of Missouri, and entered said State and built and acquired property devoted entirely to its business as a common carrier of freight and passengers, which property, including not only the many miles of railway heretofore set forth, but depots, station grounds, shops, warehouses, terminals, rolling stock and other equipment necessary to the maintenance and operation of said lines of railway, now located and maintained in the said State of Missouri for such purposes of the assessed value of $3,252,775. And your orator alleges, as aforesaid, that with said property it is engaged in the business of a common carrier in the handling of freight and passengers on these said lines of railway between points in the State of Missouri and from points within the State of Missouri to points outside of said State, and from points outside of the said State of Missouri, to points within said State, and between points in other states and territories, which necessarily requires the carriage of freight and passengers into and through the said State of Missouri.

TWELFTH.

Your orator further alleges that the aforesaid Act

of the Legislature of the State of Missouri, approved March 13, 1907, and effective June 14th, 1907, heretofore set forth, is unreasonable, unjust, oppressive, unlawful, discriminative, confiscatory, null and void, for the following reasons, to-wit:

(*a*) Because said Act is contrary to and violative of Section Two of Article Three of the Constitution of the United States, which provides that the judicial power of the United States shall extend to all controversies and cases arising under the said Constitution of the United States, the laws made under its authority, or between citizens of different States, in that said Act directly and expressly attempts to defeat the jurisdiction of the Courts of the United States of controversies arising under the Constitution of the United States and the laws passed in pursuance thereof, and of controversies between citizens of different states.

(*b*) Because said Act in attempting to confer upon the defendant John E. Swanger as Secretary of State of the State of Missouri, the power to revoke the right of your orator to carry on its business as a common carrier between points within the State of Missouri and to deprive your orator of the use of its property for such purposes, and to forbid thereby the exercise of the rights, privileges and immunities granted to it, as aforesaid, by the Constitution and laws of the

State of Missouri, is in an attempt to relieve the said State of Missouri from the performance of its part of the contract heretofore entered into, as aforesaid, and is contrary to and violative of Section Ten of Article One of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts, in that by the laws of the State of Missouri in full force and effect at the time your orator and its predecessors entered the said State of Missouri, your orator and predecessors were given the same rights, powers, privileges and immunities as domestic railway corporations of the State of Missouri, in that the said Act of March 13th, 1907, in denying to your orator the judicial right it freely and fully accords to domestic corporations of the State of Missouri, of removing proper cases from the State Courts of Missouri to the Federal Courts, or of instituting suits in any Federal Court against a citizen of the said State of Missouri, which denial is an attempt to impair the obligation of the contract entered into, as aforesaid between your orator and the State of Missouri, and is contrary to and violative of Section Ten of Article One of the Constitution of the United States.

(c) Because said Act in attempting to empower and authorize the defendant, John E. Swanger, to pass upon the question as to whether or not suits may

have been removed from the State Courts of Missouri to the Federal Court without the consent of the other party, denies your orator the right of trial by jury, and is therefore contrary to and violative of Act Three of the Constitution of the United States and of Section Twenty-eight of Article Two of the Constitution of the State of Missouri.

(*d*) Because the aforesaid lines of railway of your orator within the State of Missouri form the connecting links between its lines of railway in other States and Territories, and it is necessary to conduct its business as a common carrier of freight and passengers between other States and Territories over its said lines of railway within the State of Missouri, and while said act purports to deny your orator the right to engage in intra-state business only, yet the manifest purpose and the necessary and direct result of the purported forfeiture by the defendant, John E. Swanger, of the right of your orator to do intra-state business between points within the State of Missouri would necessarily and as a direct and intended consequence unreasonably and directly interfere with the interstate business of your orator, and would impose an intolerable and prohibitive burden upon all of such interstate commerce so passing into, from or through the said State of Missouri over the lines of railway so

maintained by your orator. The said Act therefore in attempting to empower and authorize the defendant John E. Swanger, as Secretary of State of the State of Missouri, to deny and take from your orator the right to carry on its business as a common carrier between points within the State of Missouri, is therefore, contrary to and violative of Section Eight of Article One of the Constitution of the United States, which reserves to Congress the right and power to regulate commerce with foreign nations and among the several States and with the Indian Tribes. And your orator submits that forasmuch as the Constitution of the United States and the laws passed in pursuance thereof have committed to Congress and its authorized Commission the power to regulate commerce among the States and withdraws the same from every degree of interference on the part of any State or any State Official, the said Act of March 13, 1907, interfering therewith is repugnant to the Constitution of the United States and the laws passed in pursuance thereof, and is therefore null and void.

(e) Because said Act, unless its enforcement is enjoined herein, affecting as it would not only its intrastate, but its interstate traffic within the State of Missouri, would so unreasonably reduce the annual gross income derived from the operation of your orator's

lines of railway within the State of Missouri, as to become insufficient to permit your orator to operate its property in the State of Missouri without loss, all of which is contrary to and violative of the provisions of the Constitution of the United States, and particularly of the Fourteenth Amendment thereto, prohibiting the taking of property without due process of law, and guaranteeing to all persons the equal protection of the laws.

(*f*) Because said Act purporting to give the defendant, John E. Swanger, as Secretary of the State of Missouri, the right arbitrarily to deny your orator the right to do business between points within the State of Missouri and thereby depriving your orator of the use of its property as a common carrier of freight and passengers for hire, is contrary to and violative of Section One of Article Fourteen of the Amendments to the Constitution of the United States, and of Section Thirty of Article Two of the Constitution of the State of Missouri, which provides that no State shall deprive any person of property without due process of law, and that no person shall be deprived of property without due process of law.

(*g*) Because said Act, in denying to your orator, under pain of heavy penalties, the right to remove a case to the Federal Court which may be commenced

in a State Court of Missouri, or the right to institute a proceeding in any Federal Court against any citizen of Missouri, thereby depriving your orator of a right to resort to the Courts of the land in an orderly manner, is contrary to and violative of Section One of Article Fourteen of the Amendment to the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

(*h*) Because said Act, in denying to your orator, a foreign railway corporation being now and for many years last past lawfully and properly within the jurisdiction of the State of Missouri, the right of appealing to the Federal Courts for the trial of its rights or the redress of its wrongs, such right being freely and fully accorded to all domestic railway corporations of the State of Missouri and to all other persons within the State of Missouri, without condition or limitation, is contrary to and violative of Section One of Article Fourteen of the Amendments to the Constitution of the United States, which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws.

(*i*) Because said Act in denying to your orator the right to appeal to the Federal Courts for the trial of its rights or the redress of its wrongs except under

the pain of heavy and prohibitive penalties is contrary to and violative of Section Ten of Article Two of the Constitution of the State of Misouri, providing that the courts of justice shall be open to every person and certain remedy afforded for every injury to person or property, and that right and justice should be administered without sale, denial or delay.

THIRTEEN.

Your orator further alleges and shows to the Court that the said Act of March 13, 1907, is inoperative, null and void, in that it is in conflict with the Constitution of the United States and the Constitution of the State of Missouri. Said act provides that the Secretary of State shall arbitrarily and without notice or hearing terminate the right of your orator and other foreign railway companies doing business between points within the State of Missouri, and shall publish such revocation in some newspaper of a large and general circulation in the state, and that thereupon your orator and other foreign railway corporations similarly situated shall not again be permitted or authorized to carry passengers or freight between points within the State of Missouri at any time within five years from the date of such revocation of the cessation of said right to do business between points within the State of Missouri. Said provisions in an arbitrary way

prohibit your orator and other foreign railway companies similarly situated from making any defense to said action of the Secretary of State of the State of Missouri, and prohibit your orator and other foreign railway companies similarly situated from making any showing or assigning any reason why their right to do business between points within the State of Missouri, should not be denied. Said provisions authorize the Secretary of State of the State of Missouri to deny the right of your orator and other foreign railway corporations similarly situated to do business between points within the State of Missouri, without a hearing, advice or consideration. But for said provisions and in ordinary litigation or hearing, if opportunity were offered your orator and others similarly situated, could submit in its defense and in support of its action evidence tending to show at least that even the terms of the said Act of March 13th, 1907, had not been violated. In the State of Missouri to every person and party save and except your orator and other common carriers of like character justice is dispensed in the courts of law freely and without default or denial in pursuance of the fundamental principles of the American Government, and of the Constitution of the United States and of the Constitution of the State of Missouri, and with full and uncircumscribed right to allege

and show in his defense such matters and things as by said provisions are denied to your orator and other like parties.

Wherefore, your orator submits that the said Act of March 13th, 1907, denies to your orator the equal protection of the laws, and deprives your orator and others similarly situated of their property without due process of law, and is repugnant to the Constitution of the United States, and particularly of the Fourteenth Amendment thereof, prohibiting the taking of property without due process of law and guaranteeing to all persons the equal protection of the laws.

FOURTEEN.

Your orator further alleges and shows to the Court that according to the provisions of said Act of March 13th, 1907, effective June 14th, 1907, after which date your orator and its officers and agents became subject to the penalties therein prescribed, if your orator should attempt to remove into the Federal Court a case commenced in the State Court of Missouri, or if your orator should attempt to commence a proceeding in any Federal Court against any citizen of the State of Missouri, the defendant herein, John E. Swanger, as Secretary of State of the State of Missouri, would as he has threatened to do, and as he will do unless restrained herein, attempt to deny the right

of your orator to do business between points within the State of Missouri. And if your orator, its officers and agents should carry or attempt to carry, or should hold itself out to carry passengers or freight of any kind from one point in the State of Missouri to another point in said State, after the defendant John E. Swanger as Secretary of State of the State of Missouri had so arbitrarily declared that the right of your orator to do business between points within the State of Missouri had ceased according to the terms of said act, your orator would be compelled to forfeit and pay to the State of Missouri for each offense a penalty of not less than $2,000 nor more than $10,000 to be recovered in any court of competent jurisdiction by the Attorney General of the State of Missouri or the Prosecuting Attorney of any county in said state in which said alleged offense shall have been committed. And your orator further alleges and shows to the court that the penalties imposed in said Act of March 13th, 1907, for the violation of its provisions are so harsh, unusual and unreasonable as to constrain your orator and other foreign railway corporations subject to the provisions of said act to submit thereto, however illegal the same may be, rather than take the risk of incurring such enormous and numerous penalties as would utterly bankrupt and destroy them, and thus cause a forfeiture

or loss of the entire property by them controlled: that if your orator should refuse to obey the mandate of said act it would before a final determination or adjudication of the question as to its validity could be obtained incur penalties that would exceed the assessed value of its property devoted to the carrying of freight and passengers between points within the State of Missouri.

FIFTEEN.

Your orator further alleges that the said Act of March 13th, 1907, is not only confiscatory of the property of your orator, but that the penalties prescribed for a violation to obey said act are so harsh, unjust, unusual, oppressive and unequal that your orator is thereby denied the equal protection of the law, and is practically precluded from the privilege of ascertaining its rights and challenging the validity of the enactment in the courts of the land. Wherefore your orator charges that the aforesaid act violates the provisions of Section One of Article Fourteen of the Amendments to the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

In consideration whereof, and forasmuch as your orator is remediless in the premises by the strict rules of the common law, and can only have relief

in the court of equity where matters of this kind are properly cognizable and relievable, your orator prays:

That the said defedant, Harry T. Herndon, as prosecuting Attorney of Clinton County, Missouri, his deputies, agents and successors in office, may be forever temporarily and permanently restrained and enjoined from enforcing or attempting to enforce the provisions of the act of March 19th, 1907, so far as it relates to the stopping of the trains operated by your orator where the tracks of the Chicago, Burlington and Quincy Railway Company intersect and cross the tracks of The Atchison, Topeka and Santa Fe Railway Company at the station of Lathrop, Clinton County, Missouri, or from enforcing or attempting to enforce any of the penalties prescribed by said statute for failure to observe the provisions of said act or from prosecuting your orator in any manner whatever for a failure to observe the provisions of said act as above specified, or from acting or attempting to act under and by virtue of any powers or rights attempted to be conferred by said legislature of the State of Missouri in said act of March 19, 1907; that the defendant John E. Swanger, as Secretary of State of the State of Missouri, his deputies, agents and successors in office, may be forever temporarily and permanently restrained from enforcing or attempting

to enforce the provisions of said Act of March 13th, 1907, providing for the revoking and cancelling of the certificate granting your orator the right to do business in the State of Missouri whenever your orator shall revoke suits or proceedings to any Federal Court or bring certain suits or proceedings in any Federal Court against any citizen of the State of Missouri; that said Acts of March 13th, 1907, and March 19th, 1907, passed by the 1907 session of the Legislature of the State of Missouri, be declared unconstitutional, uninforcible, and not binding upon your orator. And your orator prays for such other and further and different relief as in equity may be just and equitable.

And your orator further prays that in the meantime and until the hearing hereof, your orator may have a temporary restraining order embracing and including all of the relief herein prayed for, and such restraining order to continue in force until the termination of the hearing for a perpetual injunction and until the further order of this court.

AND MAY IT PLEASE YOUR HONORS, to grant unto your orator a writ of subpœna of the United States of America issuing out of and under the seal of this Honorable Court, directed to said Harry T. Herndon, as Prosecuting Attorney of Clinton County, Missouri, and said John E. Swanger, as Secretary of State of the

State of Missouri, thereby commanding them and each of them on a day certain therein to be named and under a certain penalty personally to be and appear before this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, but not under oath, answer under oath being expressly waived, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

And your orator will ever pray.

DEMURRER.

To this Bill the defendants below demurred, assigning as grounds therefor the following:

First. That said complainant has not in said bill of complaint made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against defendant, or to any relief whatsoever.

Second. It appears upon the face of complainant's bill of complaint that complainant has an adequate remedy at law.

Third. It appears upon the face of complainant's bill of complaint that this court has no jurisdiction to hear and determine this cause, or to grant any relief therein whatsoever, for the reason that said suit

is in effect a suit against the State of Missouri within the meaning of the Eleventh Article of Amendment to the Constitution of the United States.

Fourth. It appears upon the face of complainant's bill of complaint that complainant is a railroad company organized under the laws of the States of Illinois and Iowa, and that it has since the year 1875, and prior to the year 1907, consolidated by purchase, or otherwise, with a railroad company organized under the laws of the State of Missouri, and that by virtue of said consolidation it has secured all or a part of the lines of railroad in the State of Missouri, now owned and operated by said complainant, and that, therefore said complainant was not entitled, under the provisions of Section 18 and Section 21 or Article XII, of the Constitution of Missouri, and Section 1060 of Chapter 12, Article II, Revised Statutes of Missouri, 1899, to remove any suit instituted against it in the courts of Missouri to the Federal Courts, but that said complainant became and remained, by virtue of said consolidation and the Constitution and statutes of the State of Missouri, subject to the jurisdiction of the courts of Missouri as if said corporation has been organized under the laws of the State of Missouri. (Transcript, pp. 33, 34.)

This demurrer was overruled, and the defendants electing to stand on it, and refusing to plead further, a decree was entered against them as prayed in the Bill. (Transcript p. 47.) From this decree the defendants appealed.

BRIEF.

I.

The Grants Contained in the Several Acts of the Legislature of the State of Missouri Authorizing Foreign Railway Corporations to Buy, Construct, and Operate Railways in that State are, when Accepted, Binding Contracts, the Impairment of which is a Violation of the Federal Constitution, and not mere Licenses Revocable at Will.

Missouri at an early date in railway building, threw down the bars to foreign railway corporations. By the Act of 1869, (Trans. 3) it authorized the consolidation of domestic railroad companies with foreign companies. By section 4 of that act the consolidated company was given the franchises and privileges of the constituent companies.

The Act of March 24, 1870, made liberal provisions for consolidation of foreign with domestic railroad companies, the extension of the lines of foreign companies into the state, and for the purchasing or leasing of the lines of domestic companies by foreign companies. The provisions of Section 2 of the Act of 1870 with respect to the purchase by a foreign railway corporation of the railway and property of a domestic corporation are still in full force and effect, being Section 1060, Chapter 12 of the Revised Statutes of Missouri for 1899, and are as follows:

Any railroad company heretofore incorporated, or hereafter organized in pursuance of law, may, at any time, by means of subscription to the capital stock of

any other railroad company, or otherwise, aid such company in the construction of its railroad within or without this state, for the purpose of permitting a connection of the last mentioned road with the road owned by the company furnishing such aid;..... Any railroad company organized in pursuance of the laws of this or any other state, or of the United States, may lease or purchase all or any part of a railroad, with all of its privileges, rights, franchises, real estate and other property, the whole or a part of which is in this state, and constructed, owned or leased by any other company, if the lines of the road or roads of said companies are continuous or connecting at a point either within or without this state, upon such terms as may be agreed upon between the companies respectively, or any railroad company, duly incorporated and existing under the laws of any state, or of the United States, may extend, construct, maintain and operate its railroad into and through this state, and for that purpose it shall possess and exercise all the rights, powers and privileges conferred by the general laws of this state upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and provisions of the laws of this state concerning railroad corporation as fully as if incorporated in this state.

The consolidated Chicago and Southwestern Railway Company, whose lines in the states of Iowa and Missouri are now owned by the appellee, The Chicago, Rock Island and Pacific Railway Company, was organized under these acts of 1869 and 1870 (Trans. 3). Afterwards, these lines were sold and conveyed under the provisions of the Act of 1870 to the Iowa Southern and Missouri Northern Railroad Company, a corporation organized under the laws of the State of Iowa.

In June, 1880, the Iowa Southern and Missouri Northern Railroad Company was, under the laws of the states of Illinois and Iowa, duly consolidated with The Chicago, Rock Island and Pacific Railroad Company, a corporation organized under the laws of the states of Illinois and Iowa, the consolidated corporation, being the appellee, The Chicago, Rock Island and Pacific Railway Company. The consolidated Rock Island Company at once, on the 2nd day of June, 1880, took possession of the railways of the constituent companies in Missouri and elsewhere, and has continued to control, maintain and operate the same ever since. (Trans. 8, 9.)

In 1888 the Rock Island Company purchased the railway, rights and privileges of the St. Joseph and Iowa Railroad Company, a Missouri corporation. It also owns other lines of railway in the state of Missouri acquired before March, 1, 1907. (Trans. 11.)

The grants of power and privilege under which the Rock Island Company, at an expenditure of many million dollars, acquired its railways in the state of Missouri, with "all the rights, powers and privileges conferred by the general laws of this state, upon railroad corporations organized thereunder," are about as broad as the legislature could make them. Such grants are not mere licenses revocable at the will of the grantor. They are, when accepted, valid and binding contracts

which cannot be impaired in any substantial way, without the consent of the grantee. No new conditions which would materially interfere with, or obstruct the substantial enjoyment of the rights previously granted can be imposed by the state.

Since the decision of this court in the case of Dartmouth College v. Woodward, 4 Wheat. 518, it has been the settled rule that conditions in the charter of a corporation or in the laws by which it was given permission to enter the state, constitute a contract within the protection of the Constitution of the United States.

In *N. J. v. Yard*, 95 U. S. 104, 114, Mr. Justice MILLER laid down the rule as follows:

> "It has became the established law of this court that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the state within the protection of a class referred to by the Federal Constitution."

In *N. Y. L. E. & W. Ry. Co. v. Penn.*, 153 U. S. 628, a statute of Pennsylvania permitted a railway company to build into that state but made certain provisions limiting the rates on coal and providing for certain annual payments, refusal to make such payments being a forfeiture of its privileges. The statute further provided that the stock of the railway company equal to the cost of construction in Pennsylvania should be

subject to a state tax in the same manner and at the same rate as similar property in the state was taxed. The state afterwards attempted to levy an annual tax of three mills on the dollar for state purposes, on mortgages, stocks and other evidences of indebtedness, and required the treasurer of corporations, whether incorporated under the laws of Pennsylvania or of any other state, doing business in Pennsylvania, upon the payment of any interest on any script, bond or certificate of indebtedness issued by said corporation to residents of the state and held by them, to assess this tax upon the nominal value of said evidences of debt, and to deduct the amount of the tax from such interest.

In delivering the opinion of the court, holding that this statute impaired the obligation of the contract under which the railway company was authorized to acquire and operate its railroad in Pennsylvania, Mr. Justice HARLAN said:

"To any view which assumes that the state could —so long, at least, as the railroad company performed the conditions of the acts of 1841 and 1846— burden the company with conditions that would substantially impair the right to maintain and operate its road within Pennsylvania upon the terms stipulated in those acts, we cannot give our assent."

In *Commonwealth v. M. & O. R. Co.*, 64 S. W. Rep. 451, where an Alabama corporation was given legisla-

tive authority to exercise all the privileges, rights and immunities enjoyed by the corporation in the State of Alabama, it was held by the Court of Appeals of Kentucky, that the railroad company could not be compelled to become a corporation of the state of Kentucky. In the course of its opinion the court said:

"Where the legislature grants franchises or privileges to a corporation, without reservation of right to amend or repeal the grant, and the corporation accepts it, and expends money or acquires property rights based thereon, it is not competent for the State to subsequently, by amendment or independent enactment, impose additional conditions upon the privilege of exercising the franchises or using the rights so previously granted."

In 1891, the legislature of the State of Missouri passed an act, section 2 of which requires foreign corporations to file with the Secretary of State copies of their articles of association, and requires them to pay to the state upon the proportion of their capital stock represented by their property and business in Missouri, incorporating taxes and fees equal to those required of similar domestic corporations. Said section further provides:

Upon a compliance with the above provisions by said corporation, the Secretary of State shall give a certificate that said corporation has duly complied with the laws of this State, and is authorized to do business therein, stating the amount of its entire capital and of the proportion thereof which is represented in Missouri; and such certificate shall be taken by all courts in this State as evidence that the said corpora-

tion is entitled to all the rights and benefits of this act and such corporations shall enjoy those rights and benefits for the time set forth in its original charter or articles or association, unless this shall be for a greater length of time than is contemplated by the laws of this State, in which event the time of duration shall be reckoned from the creation of the corporation to the limit of time set out in the laws of this State: Provided, that nothing in this act shall be taken or construed into releasing foreign loan, building and loan or bond investment companies on the partial payment or installment plan from any provisions of law requiring them to make a deposit of money with a proper officer of this State to protect from loss the citizens of this State who may do business with such loan, building and loan or bond investment companies: Provided, that the requirement of this act to pay incorporating tax or fee shall not apply to railroad companies which have heretofore built their lines of railway into or through this State; and, provided, further, that the provisions of this act are not intended to and shall not apply to "drummers" or traveling salesman soliciting business in this State for foreign corporation which are entirely non-resident. Laws of Mo. 1891, P. 75; sec. 1024 R. S. 1899.

Section 4 of this act provides that it shall not apply to insurance companies or corporations of that character.

The Rock Island Company took no action under this law until its articles of consolidation were amended in 1902, increasing its capital stock from $50,000,000 to $75,000,000, when a copy of such amendment was filed with the Secretary of State of the State of Missouri, and such fees as were required of domestic corporations under such circumstances were paid. The

Secretary of State then issued to the Company on the 22nd day of November, 1902, the following certificate in the form required by the act:

WHEREAS, the Chicago, Rock Island and Pacific Railway Company incorporated under the laws of the States of Illinois and Iowa, has filed in the office of the Secretary of State, duly authenticated evidence of its incorporation, as provided by law, and has, in all respects complied with the requirements of law governing foreign private corporations,

NOW, THEREFORE, I, SAMUEL B. COOK, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said Chicago Rock Island and Pacific Railway Company is from the date hereof duly authorized and licensed to do business in the State of Missouri for a term ending June 3rd, 1930, and is entitled to all the rights and privileges granted to foreign corporations under the laws of this State, and that the amount of the capital stock of said corporation is Seventy-Five Million dollars, and the amount of said capital stock represented in the State of Missouri is Eight Million dollars, Three Million of which were invested in Missouri prior to April 21st, 1891.

In Testimony Whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri.

Done at the City of Jefferson, this 22nd day of November, A. D., Nineteen Hundred Two.

SAM B. COOK,
Secretary of State.

(SEAL.) By J. H. EDWARDS,
Chief Clerk.

It will be observed that this statute limits the time for which the corporation is entitled to the rights and benefits of the act to the period set forth in its original charter, unless that shall be for a greater length of

time than is contemplated by the laws of the state, in which event the time of duration is to be reckoned from the creation of the corporation to the limit of time set by the laws of the state; but it may be noted in passing, that there was no such limitation in the Act of March 24th, 1870, under which the appellee acquired its lines in Missouri, and there was then no limit in that state to the duration of a railway charter except that fixed in the charter itself.

Here is an express contract between the state and the railway company that the latter, in consideration of the payment of the incorporation tax, may do business in the state for a specified time. To add to the contract conditions not contained in the original, which impose additional burdens, or which take away substantial rights or privileges, is to impair its obligation, within the meaning of the Constitution of the United States.

This statute was construed by the Supreme Court of Missouri in *State ex rel v. Cook*, 171 Mo. 348, where it was held that a foreign railroad company which had theretofore constructed a portion of its line in that state was entitled to deduct from the proportion of its capital upon which its was required to pay a corporation tax, the cost of the railroad constructed before this act took effect. Respecting the powers granted by the act, the court said:

"The Act of 1891 covers (with the exceptions mentioned) foreign railroad corporations as well as foreign manufacturing corporations, but when the railroad company comes into the State, having complied with the requirements of that act, it becomes immediately clothed with powers and valuable rights, not possessed by corporations of any other kind. It may invade private property to survey and mark out its lines, make and file maps of its route, and thus mark as for its own lands to be taken by condemnation, the power for which is conferred. In this way when it has surveyed its lines, located its route and filed its maps and profiles, it acquires a right, over any other railroad company, to condemn that land and build its road along that route. Thus a substantial right accrues to the corporation extending over all its surveyed and located lines in the State."

With respect to the exemption of the railway company from payment of the incorporation tax upon capital represented by a line already constructed, the court said:

"But, as before observed, the property and business of a railroad company differ from those of all other corporations, and we must consider that peculiarity in this instance. If a corporation of any other character were found doing business here after the Act of 1891 took effect, without having complied with its terms, it would be subject to the penalties imposed by the act, because it was intended by the lawmakers that such corporations, if they did not care to submit to our terms, were free to cease their operations here and return to their homes. But that intention could not apply to a railroad company then owning and operating fifty or sixty miles of railroad in this State. To forbid such a company to continue to transact its business within the State would be to destroy its property. That our Legislature never intended to do."

In saying that corporations of any other character were not entitled to the exemption from payment of the incorporation tax on capital invested before the act became effective, the court probably did not have in mind manufacturing companies which had made substantial investments in manufacturing plants in the state before the passage of the act, and doubtless, referred to corporations which were doing business in the state without having made any substantial investment, and which had no contract with it with respect to the doing of business therein. The opinion shows clearly that the court did not consider the authority conferred by this statute, or any other statute of the state, authorizing railroad companies to do business therein, to be a mere license revocable at the will of the state. It is said that to forbid a railway company to continue to transact its business within the state would be to destroy its property, and that the legislature never intended to do that; and it may be added that it has no power to do that, so long as the company continues to do business in the state in accordance with the terms of the contract under which it was admitted.

In *American Smelting Co. v. Colorado*, 204 U. S. 103, a similar statute was drawn in question. A Colorado statute provided for the admission of foreign corporations to do business in that state upon the payment of certain fees. The statute providing that "such

corporations shall be subject to all the liabilities, restrictions and duties which are or may be imposed upon corporations of a like character organized under the laws of this state, and shall have no other or greater powers." Afterwards the legislature of the state passed a law imposing an annual license tax upon foreign corporations doing business in the state, in excess of that imposed upon domestic corporations. The State Supreme Court sustained the latter statute, but this court held it unconstitutional, in that it impaired the obligation of the contract entered into between the state and the corporation which had been admitted to do business before the passage of the statute. Mr. Justice PECKHAM in delivering the opinion of the court said:

"These provisions of law, existing when the corporation applied for leave to enter the State, made the payment required and received its permit, amounted to a contract that the foreign corporation so permitted to come in the State and do business therein, while subjected to all, should not be subjected to any greater liabilities, restrictions or duties than then were or thereafter might be imposed upon domestic corporations of like character.

A provision in a statute of this nature subjecting a foreign corporation to all the liabilities, etc., of a domestic one of like character must mean that it shall not be subjected to any greater liabilities than are imposed upon such domestic corporation. The power to impose different liabilities was with the State at the outset. It could make them greater or less than in case of a domestic corporation, or it could make them

the same. Having the general power to do as it pleased, when it enacted that the foreign corporation upon coming in the State should be subjected to all the liabilities of domestic corporations, it amounted to the same thing as if the statute had said the foreign corporation should be subjected to the same liabilities, in other words the liabilities, restrictions and duties imposed upon domestic corporations constitute the measure and limit of the liabilities, restrictions and duties which might thereafter be imposed upon the corporation thus admitted to do business in the State. It was not a mere license to come in the State and do business therein upon payment of a sum named, liable to be revoked or the sum increased at the pleasure of the State, without further limitation. It was a clear contract that the liabilities, etc., should be the same as the domestic corporation, and the same treatment in that regard should be measured out to both. If it were desired to increase the liabilities of the foreign, it could only be done by increasing those of the domestic, corporation at the same time and to the same extent."

This act of 1891 was again construed by the Supreme Court of Missouri, in *So. Ill. & Mo. Bridge Co. v. Stone*, 174 Mo. 1, where the doctrine laid down in *State ex rel v. Cook, supra*, was approved, and it was held that a foreign bridge corporation having complied with the act was entitled to exercise the right of eminent domain to the same extent that a domestic company could have exercised it; and it was held further that the clause in the statute providing that a foreign corporation complying with the act shall have no other or greater powers than a domestic corporation of like character, must be construed as giving such foreign

corporation all the powers of a domestic corporation. Attention was called on page 30 of the opinion to the fact that this statute was adopted from the Revised Statutes of Illinois of 1874, and that this clause had been construed by the Supreme Court of that State to give a foreign corporation complying with its terms, all the powers, and subjecting it only to liabilities and restrictions imposed upon domestic corporations of like character. The Court cites with approval *Stevens v. Pratt*, 101 Ill. 217 and *Academy v. Sullivan*, 116 Ill. 375.

This construction is entirely in harmony with the construction placed upon a similar Colorado statute by this Court in *American Smelting Co. v. Colorado*, *supra*.

II.

The Act of the Legislature of the State of Missouri Providing for Revoking the License, Right and Authority of a Non-resident Railway Company to do Business in the State Whenever it Resorts to a Federal Court, Impairs the Obligations of the Contract with the State Authorizing Appellee to do Business in the State, Takes its Property Without Due Process of Law, and Deprives it of the Equal Protection of the Laws.

This statute is as follows:

SECTION 1. If any foreign or non-resident railway corporation of whatever kind, incorporated, created and existing under the laws of any other State, Territory or country, and doing business as a carrier of

passengers or freight from one point of this State to another point in this State, under the laws of this State, regulating or authorizing the licensing of, or the issuing of a permit or a certificate of authority to, or suffering or allowing any such corporation to enter or to do business in this State, shall, without the consent of the other party, in writing, to any suit or proceeding brought by or against it in any court of this State, remove said suit or proceeding to any federal court, or shall institute any suit or proceeding against any citizen of this State in any federal court, the license, permit, certificate of authority and all right of such corporation and its agents to carry passengers or freight from one point in this State to another point in this State shall forwith be revoked by the Secretary of State, and its right to do such business shall cease, and the Secretary of State shall publish such revocation in some newspaper of large and general circulation in the State, and such corporation shall not again be authorized or permitted to carry passengers or freight from one point in this State to another point in this State or to do business as a carrier of passengers or freight of any kind from one point in this State to another point in this State at any time within five years from the date of such revocation or the cessation of such right. But the revocation of such license, permit, right, certificate of authority, or the cessation of such right, shall not be deemed to prohibit or prevent such corporation from carrying passengers or freight from a point within this State to a point without this State, or from a point without this State to a point within this State, or from making what are known as interstate shipments and transportation.

SEC. 2. If any corporation included in the provisions of this act shall carry, or attempt to carry, or hold itself out to carry passengers or freight of any kind from one point in this State to another point in

this State, without a license, permit or certificate of authority therefor first had and obtained from the State of Missouri—to be issued by the Secretary of State—or after its license, permit, right or certificate of authority to carry passengers or freight of any kind from one point in this State to another point in this State, shall have been revoked or ceased, as provided for by the preceding section of this act, it shall forfeit and pay to the State of Missouri for each offense a penalty of not less than two thousand dollars nor more than ten thousand dollars, suit to be brought therefor in any court of competent jurisdiction by the Attorney General, or the prosecuting attorney of any county in the State in which such offense shall have been committed; and such offense shall be deemed to have been committed either in the county where such transportation originated or in the county where it terminated. And the governor may, whenever he shall deem it necessary, appoint special counsel to assist the Attorney General or any prosecuting attorney to enforce or carry out the provisions of this act.

SEC. 3. All acts or parts of acts in conflict herewith are, in so far as they are in conflict, hereby repealed.

Approved March 13, 1907.

1. This statute impairs the obligation of the contract entered into between the state and the railway company when that company accepted the grant of power contained in the Act of March 24th, 1870, by purchasing the railways which it now owns and operates in the State of Missouri, and violates section 10 of article 1 of the Constitution of the United States, in that it deprives the railway company of a substantial right which it enjoyed under the acts of 1870 and 1891 hereinbefore mentioned.

When the railway company was granted the right to do business in Missouri, it was given the right to bring its charter with it. That charter made it a citizen and resident of the states of Illinois and Iowa, and gave it all the rights possessed by other non-residents of the State of Missouri with respect to the removal of suits from state to federal courts, and with respect to the institution of suits in federal courts. That was a substantial right. This statute, if valid, takes that right away. There was no condition in the contract depriving the railway company of that right or permitting the legislature of the state to make its surrender at any time thereafter a condition precedent to the use and operation of its railroad in the state. The very fact that the Legislature of the State of Missouri has thought the taking away of this right to be of sufficient importance to justify the passage of this statute, shows that the right is, in its opinion, a substantial and valuable one. But the amount of the impairment of the obligation is not material. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of this Court to redress the wrong. *Farrington v. Tenn.*, 95 U. S. 679, 683.

On principle, this case cannot be distinguished from Commonweath v. M. & O. R. Co., 64 S. W. Rep. 451, where the legislature of the state of Kentucky had

attempted to do indirectly what the state of Missouri by this statute has attempted to do directly. In the Kentucky case, a foreign railroad company had by the legislature been granted permission to do business in the state. After the railway company had accepted the grant of power and constructed its railroad in Kentucky, the legislature passed an act providing that all foreign railway corporations should become domestic corporations as a condition to the control or operation of any railway within the state. The Court of Appeals of Kentucky held that the legislature having granted the railway company the right to do business in the state, could not subsequently, by amendment or independent enactment, impose additional conditions upon the privileges of exercising the franchises or using the rights so previously granted.

Referring to the fact that by becoming a citizen of the state the corporation would lose its right to resort to the Federal Courts, the Court of Appeals said:

For appellant it is argued that, to fulfill the requirement of the section named, it would be compelled to change its status from that of a foreign corporation to a domestic one. In other words, it would be compelled to become a citizen of Kentucky. One of the advantages now thought to pertain to its nonresidency is the privilege of claiming the jurisdiction of the Federal Courts in certain actions. Others of equal or greater value in fact may readily occur to the mind. But we apprehend that the real question is not to the extent of any change of condition, but

whether there is in fact any change. The imposition of further conditions to be performed by the grantee, other than the police regulations, before it can lawfully use or enjoy the privileges theretofore granted to it, is essentially a change of the contract. . . . If section 841 is applied to appellee, it will be required, in order to continue the use and enjoyment of the privileges granted to it in 1848, to do something in addition to that required by the terms of its grant. It will be compelled to take up the burdens of a citizenship, which it has not hitherto had to bear, and deprive itself of privileges deemed by many, or all similarly situated, to be of considerable pecuniary value. This would be manifest, substantial impairment of the obligation of the State's contract, and is therefore repugnant to section 10, article 1, of the Constitution of the United States."

That part of section 2 of the Act of March 24th, 1870, which confers authority upon a foreign railway company to purchase and operate a railroad in Missouri, is as follows:

. . . or any such railroad company which may have built its road to the boundary line of the State, may extend into the adjoining State, and for that purpose may build or buy, or lease a railroad in such adjoining State and operate the same, and may own such real estate and other property in such adjoining State as may be convenient in operating such road; or any railroad company organized in pursuance of the laws of this or any other State or of the United States, may lease or purchase all or any part of a railroad with all of its privileges, rights, franchises, real estate and other property, the whole or a part of which is in this State and constructed, owned or leased by any other company, if the lines of the road or roads of said companies are continuous or connected at a point either within or without this State, upon such terms

as may be agreed upon between said companies respectively.

In these clauses only two conditions are imposed: In the first clause it is required that the purchasing railroad company shall have built its road to the boundary line of the state. In the second clause it is required that the lines of road of the contracting companies be continuous or connected at a point either within or without the state. No other conditions are imposed. It is not contended that the state surrendered the right to make reasonable regulations for the construction, maintenance and operation of any railroad in the state so purchased. But the state did not in this statute, or in any other statute, reserve the right after the railway company had accepted the grant to deprive it of its right to resort to the jurisdiction of Federal Courts. No state legislature can deprive any person of the right to resort in a proper case to the Courts of the United States. *Blake v. McClung*, 172 U. S., 239, 255. *Cowles v. Mercer County*, 7 Wall 118.

In *N. Y. L. E. & W. R. Co. v. Penn.*, 153 U. S. 628, Mr. Justice HARLAN in delivering the opinion of the Court, said:

"The contract in question left unimpaired the power of the State to establish such reasonable regulations as it deemed proper touching the management of the business done and the property owned by the railroad company in Pennsylvania, which did not materially in-

terfere with or obstruct the substantial enjoyment of the rights previously granted. But the fourth section of the act of 1885 is not within that category. It assumes to do what the State has no authority to do, to compel a foreign corporation to act, *in the State of its creation*, as an assessor and collector of taxes due in Pennsylvania from residents of Pennsylvania. . . . "

The Legislature of Missouri has no more power to deprive a railway company which it has admitted to do business in the state of its constitutional right to invoke the jurisdiction of the Federal Courts than had the Legislature of Pennsylvania to compel a foreign railway company to act, in the state of its creation, as an assessor and collector of taxes due in Pennsylvania from residents of that state.

In *Railway Co. v. Whitton*, 13 Wall. 270, 286, Mr. Justice FIELD, delivering the opinion of the court, said:

"Whenever a general rule as to property or personal rights, or injuries to either, is established by State legislation, its enforcement by a Federal Court in a case between proper parties is a matter of course, and the jurisdiction of the court, in such a case, is not subject to State limitation."

It follows that the railway company having been granted the power to buy railroads in the State of Missouri, with all their privileges, rights, franchises, real estate and other property, the state has no power to afterwards say that it shall not appeal, in a proper case,

to the jurisdiction of the Federal Courts for the protection of its right to properly enjoy and use such property and franchises. The right to appeal to the Federal Courts is given by the constitution and laws of the United States, and no state can lawfully deprive any person or corporation of that right. A state cannot lawfully impose a severe and oppressive penalty for the doing of an act which a corporation has the right to do under the Constitution and laws of the United States and the doing of which the state has no right to prohibit. Penalties may be imposed for the violation of legal obligations, but not for the exercise in a proper manner of rights created by law.

2. This act of March 13, 1907, also denies to appellee the equal protection of the laws guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. By the invitation and permission of the State, it is doing business therein, and is subject to its process at the instance of suitors, as fully as any domestic corporation. Under such circumstances it is entitled to invoke the protection of this clause of the Federal Constitution.

Northwestern National Life Ins. Co. v. Riggs, 203 U. S. 243, 248.

G. C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 154.

This statute, if valid, deprives appellee of the right which it has under the Constitution and laws of

the United States to remove, in a proper case, suits from State to Federal Courts, or to institute suits or proceedings against citizens of Missouri in any Federal Court of competent jurisdiction. This statute does not deprive any domestic corporation of such rights. A Missouri corporation may sue appellee in a Federal Court in Missouri or in the Federal Courts of any other state where jurisdiction can be obtained, but the appellee, if this statute is valid, cannot sue a citizen of Missouri in any Federal Court, on any cause of action whatsoever.

There are many proceedings authorized by the laws of the United States of which Federal Courts have exclusive jurisdiction. This statute deprives appellee of the right to institute any of them against a citizen of the State of Missouri, leaving such proceedings open to domestic corporations. Appellee could not without forfeiting its right to do business in Missouri, and becoming liable for the enormous penalties imposed by the act, file a petition in bankruptcy against a citizen of the State. It would probably be a violation of the act to sue out a writ of error in this Court to review a decision of any State Court where a citizen of Missouri is an adverse party. The statute is a practical nullification of the laws of the United States giving Circuit Courts of the United States original cognizance concurrent with the Courts of the several states of all suits of a civil nature, at common law or in equity,

where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution and laws of the United States, or in which there shall be a controversy between citizens of different states, where a citizen of Missouri is an adverse party.

No foreign railway corporation can, without violating this statute, and forfeiting its right to do business in Missouri, sue a citizen of that state in any Federal Court to test the validity of a patent. None of these rights are denied to domestic corporations.

This statute cannot be justified on the ground of classification. Foreign railway corporations which have been admitted to do business in the state upon an equality with domestic corporations, cannot be denied the equal protection of the laws of the state.

Delivering the opinion of the court in *St. Tammany Water Works v. New Orleans Water Works*, 120 U. S. 64, 71, Mr. Justice HARLAN said:

"The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory in which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

M. Justice FIELD, delivering the opinion of the

court in *M. & St. L. Ry Co. v. Beckwith*, 129 U. S. 26, 28-29, said:

"And first, as to the alleged conflict of the law of Iowa with the clause of the Fourteenth Amendment ordaining that no State shall deny to any person within its jurisdiction the equal protection of the law. That clause does undoubtedly prohibit discriminating and partial legislation by any State in favor of particular persons as against others in like condition. Equality of protection implies not merely equal accessibility to the Courts for the prevention or redress of wrongs and the enforcement of rights, but equal exemption with others in like condition from charges and liabilities of every kind."

A law of Vermont attempted to discriminate between agents representing foreign and domestic companies. The Supreme Court of that state in *State v. Cadigan*, 50 Atl. Rep. 1079, 1081, holding the statute unconstitutional, said:

"No State shall 'deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' Const. U. S., Ament. 14, sec. 1. To deprive one of the right to labor and transact business is to deprive him of his liberty, and also of his property. To hedge the privileges about with conditions and exactions for one class which do not exist for others is to deny to the former the equal protection of the laws; and when the classification is based upon a distinction wholly fanciful or arbitrary, having no possible reasonable connection with any proper purpose to be served by the enactment, it is unconstitutional and void. The equal protection of the law means 'the protection of equal laws.'"

The extreme penalties imposed by this statute

upon a foreign railway company doing intrastate business after having violated its provisions, deprive it of the equal protection of the laws. For a violation of this statute the appellee would be subjected to a fine of from $2,000 to $10,000 for every shipment made or every passenger carried between points within the State of Missouri, and a like fine for every time it held itself out to carry such freight or passengers.

It is alleged in section 14 of the Bill:

"And your orator further alleges and shows to the court that the penalties imposed in said Act of March 13th, 1907, for the violation of its provisions are so harsh, unusual and unreasonable as to constrain your orator and other foreign railway corporations subject to the provisions of said act to submit thereto, however illegal the same may be, rather than take the risk of incurring such enormous and numerous penalties as would utterly bankrupt and destroy them, and thus cause a forfeiture or loss of the entire property by them controlled; that if your orator should refuse to obey the mandate of said act it would before a final determination or adjudication of the question as to its validity could be obtained incur penalties that would exceed the assessed value of its property devoted to the carrying of freight and passengers between points within the State of Missouri."

The demurrer admits the truth of those allegations.

In delivering the opinion of the court in *Cotting v. Kansas City Stock Yards Co.*, 183 U. S., Mr. Justice BREWER said:

"Do the laws secure to an individual an equal protection when he is allowed to come into Court and make his claim or defense subject to the condition that upon a failure to make good that claim or defense the penalty of such failure either appropriates all his property, or subjects him to extravagant and unreasonable loss? . . . It is doubtless true that the State may impose penalties such as will tend to compel obedience to its mandates by all, individuals or corporations, and if extreme and cumulative penalties are imposed only after there has been a final determination of the validity of the statute, the question would be very different from that here presented. But when the Legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the Courts, that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws."

This language was quoted with approval by Mr. Justice PECKHAM in delivering the opinion of the court in *ex parte* Young, 209 U. S. 123, 146, where it was held that a statute of Minnesota was unconstitutional, in that its enormous penalties deprived a railway company of the equal protection of the laws and took its property without due process of law. In the course of the opinion in this last case it was said:

"If the law be such as to make the decision of the legislature or of a commission conclusive as to the sufficiency of the rates, this court has held such a law to be unconstitutional. *Chicago etc. Railway Co. v. Minnesota*, 134 U. S. 418. A law which indirectly accomplishes a like result by imposing such conditions upon the right to appeal for judicial relief as works

an abandonment of the right rather than face the conditions upon which it is offered or may be obtained, is also unconstitutional. It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights."

In *Barbier v. Connolly*, 113 U. S. 27, 31, Mr. Justice FIELD in delivering the opinion of the court, laid down the following comprehensive rule respecting the application of the Fourteenth Amendment:

"The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoilation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the Courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

If this language correctly states the purpose and extent of the equal protection clause of the Fourteenth Amendment, this Act of March 13, 1907, is unconstitutional, beyond all question. If a State cannot give a preference in litigation to its own citizens over those of other States (*Blake v. McClung*, 172 U. S. 239, 254-256), it necessarily follows that a State cannot deny to a foreign railway corporation, authorized and invited to purchase and operate railways in the State, access to the Courts of the land when such right is fully and freely given to every person and to all other foreign corporations, as well as to domestic corporations, in like litigation.

The equal protection clause of the Fourteenth Amendment will not permit, under the guise of classification, any such arbitrary and unreasonable division into classes. No greater burdens can be laid upon one person or corporation in the same calling or condition and under the same circumstances, than is at the same time imposed upon other persons or corporations in like calling or condition and under the same circumstances; and a law which singles out foreign railway corporations lawfully doing business in the State for a restrictive regulation which is not made applicable to other persons or corporations, resident or non-resident, under like conditions and circumstances, denies

to such foreign corporation the equal protection of the laws, and is unconstitutional and void.

In *Home Insurance Co. v. Morse*, 20 Wall. 445, Mr. Justice HUNT said:

"A corporation has the same right to the protection of the laws as a natural citizen, and the same right to appeal to all the courts of the country. The rights of an individual are not superior in this respect to that of a corporation."

There are cases in which it has been held that before resorting to the injunctive jurisdiction of the courts, the reasonableness of the statute complained of should be tested by actual experience, but this is not such a case. The validity of this statute can only be tested by violating it. The extreme penalty is imposed for one violation. By bringing this suit to test the constitutionality of the statute, the appellee, if the statute is valid, has already subjected itself to penalties so enormous as to bankrupt it. The imposing of such enormous penalties as a result of an unsuccessful effort to test the validity of the statute, renders it unconstitutional on its face. *Exparte* Young, 209 U. S. 123, 148.

3. The right conferred upon appellee by the Acts of March 24, 1870 and March 11, 1895, to do business in the State is property, within the meaning of the Fourteenth Amendment, and that property right cannot be substantially impaired, or taken away except

by due process of law. Appeal to the jurisdiction of the courts of the United States for the protection of that property is one of the processes of law which appellee has the constitutional right to invoke.

The Act of March 13, 1907, by reason of the enormous penalties imposed for an unsuccessful effort to test its validity, as well as by reason of the arbitrary power confired upon the Secretary of State, without a hearing, to revoke the license of appellee to do business within the state, takes its property without due process of law.

Due process of law means law in the regular course of administration through courts of justice (2 Kent. Com. 13). It requires notice, hearing and judgment. (*Bertholf v. O'Reilly*, 74 N. Y. 519.)

Section 10 of Article II of the Constitution of Missouri, provides that:

"The courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice should be administered without sale, denial or delay."

And section 30 of the same article provides:

"That no person shall be deprived of life, liberty or property, without due process of law."

Yet the legislature of the State attempts to shut the courts of the United States to foreign railroad corporations in cases or proceedings in which a citizen

of the state is an adverse party, leaving them open to citizens and domestic corporations of the State; and to prevent foreign railroad corporations from entering the courts of justice established by the United States by imposing harsh and unreasonable penalties for invoking their protection.

The Act of March 13, 1907, gives the Secretary of State arbitrary power, without hearing, and with no right of appeal, to deprive a foreign railroad company of the right to use its property in the state in intra-state business, whenever he thinks it has violated this statute. And after he makes public his decree, the unfortunate railroad company is deprived of the use of its property for that purpose for five years, without notice, hearing or judgment. The decision of the Secretary of State, so far as this statute is concerned, is final. No court is given jurisdiction to review his action. He is clothed with arbitrary power to destroy, with the stroke of a pen, property worth millions of dollars.

Due process of law requires that when the property of a person or corporation is to be taken, there must be notice of the proceeding, and an opportunity to be heard and to offer proof.

Londoner v. Denver, 210 U. S. 373, 385.

The statute only prohibits the removal by a foreign railroad corporation of cases from State to Federal

Courts, or the institution of suits or proceedings by such corporations in a Federal Court against a citizen of the State, without his consent. Whether such consent has been given is, of course, a question of fact which must be passed upon by the Secretary of State before he is authorized to revoke the license of a foreign railroad corporation to do business. This statute makes no provision for any notice to the railway company of the proposed action to forfeit its right to do business, affords it no right to offer testimony or to be heard upon any question of fact or law involved.

The State cannot give its Secretary of State purely personal and arbitrary power to take the property of a person or corporation, or to forfeit its right to use that property.

In *Wynehamer vs. People*, 13 N. Y. 378, 392, Judge Comstock, delivering the opinion of the court said:

"No doubt, it seems to me, can be admitted of the meaning of these provisions. To say, as has been suggested, that 'the law of the land,' or 'due process of law,' may mean the very act of legislation which deprives the citizen of his rights, privileges or property, leads to a simple absurdity. The Constitution would then mean, that no person shall be deprived of his property or rights, unless the Legislature shall pass a law to effectuate the wrong, and this would be throwing the restraint entirely away. The true interpretation of these constitutional phrases is, that where rights are acquired by the citizen under the existing law, there is no power in any branch of the government to take

them away; but where they are held contrary to the existing law, or are forfeited by its violation, then they may be taken from him—not by an act of the Legislature, but in the due administration of the law itself, before the judicial tribunals of the State. The cause or occasion for depriving the citizen of his supposed rights must be found in the law as it is, or, at least it cannot be created by a legislative act which aims at their destruction. Where rights of property are admitted to exist, the Legislature cannot say they shall exist no longer; nor will it make any difference, although a process and a tribunal are appointed to execute the sentence. If this is the 'law of the land,' and 'due process of law,' within the meaning of the Constitution, then the Legislature is omnipotent. It may, under the same interpretation, pass a law to take away liberty or life without a pre-existing cause, appointing judicial and executive agencies to execute its will. Property is placed by the Constitution in the same category with liberty and life. . . .

It is plain, therefore, both upon principle and authority, that these constitutional safeguards, in all cases, require a judicial investigation, not to be governed by a law specially enacted to take away and destroy existing rights, but confined to the question whether, under the pre-existing rule of conduct, the right in controversy has been lawfully acquired and is lawfully possessed."

In *Hagar v. Reclamation District*, 111 U. S. 701, 708, Mr. Justice FIELD said:

"It is sufficient to observe here, that by 'due process' is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and whenever it is necessary for the protection of the parties, it must give them an opportunity

to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

In this discussion, no attempt has been made to distinguish the cases where this Court has held that the licenses of certain transitory corporations, licensed, temporarily, to do business in a state, may be revoked on account of the removal of cases from State to Federal Courts. The distinction between such cases and this, is so manifest as to need no discussion. This distinction was pointed out by Mr. Justice BREWER in *Monongahela Navagation Co. v. United States*, 148 U. S. 312, 343, 344:

"Another contention is this: First, that the grant of right to the Navigation Company was a mere revocable license; secondly, that, if it was not, there was a right in the State to alter, amend or annul the charter; and, thirdly, that there was, by the 18th section thereof, reserved the right at any time after twenty-five years from the completion of the improvement to purchase the entire improvement and franchise by paying the original cost, together with six per cent interest thereon, deducting dividends theretofore declared and paid. . a provision changed by section 8 of the act of June 4, 1839, so as to require a payment of the expenses incurred in constructing and making repairs, with eight per cent per annum interest. But little need be said in reference to this line of argument. We do not understand that the Supreme Court of Pennsylvania has ever ruled that a grant like this is a mere revocable license. The cases referred to by

and open to the ingress and egress of all passengers a reasonable time before the arrival and until after the departure of all passenger trains on said railroad which stop or receive or discharge passengers at such depots, stations or passenger houses. Every railroad corporation or company which shall fail, neglect or refuse to comply with any or either one of the provisions of this section from and after the time the same shall become a law, shall, for each day said railroad corporation or company refuses, neglects or fails to comply therewith, shall forfeit and pay the sum of twenty-five dollars, which may be recovered in the name of the State of Missouri, to the use of the school fund of the county wherein said crossing, depot, station, passenger house or branch railroad is located; and it shall be the duty of the prosecuting attorney to prosecute for a recovery of the same. The term "railroad corporations," as used in this act, shall include the term "railway company and railway corporation."

The record does not show how many passenger trains operated by the Burlington Company over this line, stopped at the town of Lathrop, but it may be assumed that it complies with the requirements of this statute, by furnishing sufficient accomodations for the transportation of passengers, baggage, mails and express to and from this junction point.

The record shows that the appellee stops an evening and a morning passenger train, each way, at Lathrop daily, and that it also stops at that point two local freight trains which carry passengers. The Atchison, Topeka and Santa Fe Railway Company runs two trains each way past this junction point, all of which stop at Lathrop, making close and direct connec-

tion with the trains of the appellee which stop at the station, and that except under unusual circumstances passengers seldom find it convenient to change from the trains of the appellee to those of the Atchison, Topeka, and Santa Fe Railway Company at Lathrop. It is alleged in the sixth paragraph of the Bill that facilities for the exchange of passengers at Lathrop are amply sufficient to accomodate the public, and that the train service of the appellee at said station is both convenient and satisfactory to the public, and that the trains of the appellee which stop at Lathrop afford the public every reasonable opportunity for changing to or from the trains of the Atchison, Topeka and Santa Fe Railway Company, and that the stopping of all its trains at Lathrop would not practically or materially increase the facilities for the interchange of passengers between the trains of appellee and the Atchison Company.

It is shown in the fifth paragraph of the Bill that appellee runs a fast, through passenger train each way between Chicago and Ft. Worth, Texas, and another like train each way between Chicago and the Pacific Coast, neither of which stops at Lathrop to take on or let off passenger; that the Ft. Worth trains No. 211 and No. 212, which do not stop at Lathrop, are immediately preceded by trains No. 261 and No. 262, which do stop there, and which are maintained for the express

purpose of collecting passengers from local stations and to convey them to nearby stations where all of said fast, through trains do stop for the purpose of taking on and letting off passengers; that to stop all of its trains at Lathrop for the purpose of letting on and off passengers would be a direct, unreasonable and unwarrantable interference with its interstate business; that the trains which appellee does not stop at Lathrop would not, and could not be maintained but for the transportation of interstate passengers, who patronize these trains because of the rapid and unbroken schedule maintained by them; that if said trains were required to stop at all junctions with other railways, and there interchange passengers, their usefulness as through trains would be destroyed, and the interstate business of appellee would be interfered with to an unwarranted extent, without any corresponding benefit to the traveling public; that without such interstate traffic which is now carried by said trains by reason of their rapid, unbroken schedules, said trains could not be operated without loss, and that to require such trains to stop at Lathrop would be a taking of the property of appellee without due process of law; and that the Act of March 19, 1907, so far as it applies to the said trains which do not stop at Lathrop, is a serious burden upon the interstate commerce transported by the said trains, and an

unreasonable, unlawful and unjust interference with said interstate commerce, and in violation of the act to regulate commerce, and of the provision of the Constitution of the United States giving Congress power to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.

In the ninth paragraph of the Bill it is shown that the stopping of said trains at Lathrop will unreasonably hinder delay and obstruct the carriage and delivery of United States mails carried under contract with the United States.

At the point of crossing there is maintained an interlocking plant, rendering it unnecessary to stop trains at the railroad crossing at Lathrop, and trains which do not stop are operated over and across the tracks of the Atchison Company with greater safety and security to the traveling public than those which do stop.

The Bill shows that appellant, Harry T. Herndon, as Prosecuting Attorney of Clinton County, Missouri, was at the time of the commencement of this suit, threatening, and ever since the 21st day of July, 1907, had been threatening to prosecute appellee under the Act of March 19, 1907, for the recovery for the benefit of the school fund of this said county, of the penalty of twenty-five dollars per day imposed by that statute for failure to stop passenger trains at junction points.

This statute is void on its face. In requiring that all trains carrying passengers stop at the junction or intersection of other railroads, this statute is an unreasonable and unwarranted interference with interstate commerce. The legislature in passing this statute was not content to provide that ample facilities and accommodations should be provided at junction points for the exchange of local passenger traffic; it attempted to regulate not only such traffic, but the interstate traffic passing such junction points. It is beyond question that a statute which requires every passenger train, without regard to their number or the facilities afforded for local traffic, to stop at specified points is a regulation of interstate commerce and not a reasonable police regulation.

This question has been frequently before this Court. In *Illinois Cent. R. Co. v. Ill.*, 163 U. S. 142, an Illinois statute providing that all regular passenger trains should stop at all county seats a sufficient length of time to receive and let off passengers, was held to be an unconstitutional hindrance and obstruction of interstate commerce, and of the passage of the mails of the United States. In the course of the opinion it was said:

> The State may doubtless compel the railroad company to perform the duty imposed by its charter of carrying passengers and goods between its termini

within the State. But so long, at least, as that duty is adequately performed by the company, the State cannot, under the guise of compelling its performance, interfere with the performance of paramount duties to which the company has been subjected by the Constitution and laws of the United States.

The State may make reasonable regulations to secure the safety of passengers, even on interstate trains, while within its borders. But the State can do nothing which will directly burden or impede the interstate traffic of the company, or impair the usefulness of its facilities for such traffic. *Railroad Co. v. Richmond*, 19 Wall. 584, 589; *Stone v. Farmers' Loan & Trust Co.*, 116 U. S. 307, 334; *Smith v. Alabama*, 124 U. S. 465.

It may well be, as held by the Courts of Illinois, that the arrangements made by the company with the Postoffice Department of the United States cannot have the effect of abrogating a reasonable police regulation of the State. But a statute of the State, which unnecessarily interferes with the speedy and uninterrupted carriage of the mails of the United States, cannot be considered as a reasonable police regulation."

In *Gladson v. Minnesota*, 166 U. S. 427, a statute of Minnesota requiring all regular passenger trains to stop at county seats was held valid since it excepted from its operation all interstate and transcontinental trains.

In *L. S. & M. S. Ry. Co. v. Ohio*, 173 U. S. 285, where a statute of Ohio required three regular passenger trains each way to stop at stations containing over 3,000 inhabitants, it was held that the statute was not an unreasonable interference with interstate commerce since the law did not apply to all trains, or any particular kind, but left the Railway Company free to operate such trains as it saw fit without stop-

ping them at county seats.

In *Cleveland, C., C. & St. Ry. Co. v. Illinois*, 177 U. S. 514, it was held that an Illinois statute requiring that all regular passenger trains stopped at county seats a sufficient length of time to receive and let off passengers, was an unconstitutional interference with interstate commerce. This case was distinguished from the Ohio case, supra, on the ground that the Ohio statute only required that three regular passenger trains should stop at every station containing 3,000 inhabitants, leaving the company at liberty to run as many through passenger trains, exceeding three per day, as it choose, without restriction as to stopping at particular stations. "In other words," as it was said, "It left open the loophole which the State of Illinois has effectually closed." The same is true of this Missouri statute. Every loophole is effectually closed.

In delivering the opinion of the court in this last case Mr. Justice BROWN said:

"The question broadly presented in this case is this: Whether a State statute is valid which requires every passenger train, regardless of the number of such trains passing each way daily and of the character of the traffic carried by them, to stop at every county seat through which such trains may pass by day or night, and regardless also of the fact whether another train designated especially for local traffic may stop at the same station within a few minutes before or after the arrival of the train in question?"

Conceding that the State may rightfully provide reasonable regulations for the transfer of passengers at junction points, for the same reason that it may require that reasonable facilities for the accommotion of intrastate passenger traffic be afforded at every railroad station in the state, still the State has no more right to make an unreasonable or burdensome regulation with respect to facilities for the transfer of passengers from one railroad to another, than it has to make unreasonable and burdensome regulations for the accommodation of passengers at local stations. The power of the State in each case is the same, and it is subject to the same limitations. The statute, therefore, which requires that all trains, without regard to their character, or the facilities provided for the transfer of passengers at junction points, stop at such points for that purpose, is as objectionable as one which requires that all passenger trains, without qualification, be required to stop at county seats, or at other specified points.

As applied to the admitted facts of this case, this statute is unconstitutional. It is shown by the Bill, and admitted by the Demurrer, that a sufficient number of passenger trains are stopped at Lathrop to accommodate all local demands, and that the facilities for the interchange of passengers at that point are ample to care for all the business offered, both local and inter-

state; that only under exceptional circumstances is there any interchange of passengers at that point. To require the stoppage of every fast express train of the Company, doing an interstate business, to accommodate exceptional and infrequent conditions, is an unreasonable interference with interstate commerce. The settled rule of this Court, is that after all local conditions have been reasonably provided for, railways may rightfully adopt special provisions for through traffic, and that legislative interference therewith is an unreasonable and unlawful interference with interstate commerce.

In *Cleveland, C., C. & St. L. Ry. Co. v. Illinois*, 177 U. S. 514, Mr. Justice BROWN in the course of the opinion said:

> We are not obliged to shut our eyes to the fact that competition among railways for through passenger traffic has become very spirited, and we think that they have a right to demand that they shall not be unnecessarily hampered in their efforts to obtain a share of such traffic. It is evident, however, that neither the greater safety of their tracks, the superior comfort of their coaches or sleeping berths or the excellence of their tables would insure them such share if they were unable to compete with their rivals in the matter of time. The great efforts of modern engineering have been directed to combining safety with the greatest possible speed in transportation, both by land and water. The public demand this; the railway and steamship companies are anxious in their own interests to furnish it and local legislation ought not to stand in the way of it.

In *Mississippi R. R. Com. v. Illinois Cent. R. Co.*, 203 U. S., 335, it was held that an order of the Mississippi Railroad Commission requiring that certain through trains be stopped at a point where it was shown by the Bill that the accommodations afforded at that station by other trains provide by the company sufficiently accommodated the traveling public at that point, and that to require the trains in question to stop would imperil the ability of the railway company to comply with its contract with the United States for the carriage of mails, and embarrass its interstate traffic, was an unwarrantable interference with interstate commerce, and void.

Mr. Justice PECKHAM in delivering the opinion of the court, after reviewing former decisions of this court on this subject, and laying down the rule that where inadequate facilities are furnished, the stoppage of interstate trains may be compelled, said:

"But if the company has furnished all such proper and reasonable accommodation to the locality as fairly may be demanded, taking into consideration the fact, if it be one, that the locality is a county seat, and the amount and character of the business done, then any interference with the company (either directly by statute, or by a railroad commission acting under authority of a statute) by causing its interstate trains to stop at a particular locality in the State, is an improper and illegal interference with the rights of the railroad company, and a violation of the commerce clause of the Constitution. . . . . .

The transportation of passengers on interstate trains as rapidly as can with safety be done is the inexorable demand of the public who use such trains. Competition between great trunk lines is fierce and at times bitter. Each line must do its best even to obtain its fair share of the transportation between States, both of passengers and freight. A wholly unnecessary, even though a small, obstacle ought not, in fairness, to be placed in the way of an interstate road, which may thus be unable to meet the competition of its rivals. We by no means intend to impair the strength of the previous decisions of this court on the subject, nor to assume that the interstate transportation, either of passengers or freight, is to be regarded as overshadowing the rights of the residents of the State through which the railroad passes to adequate railroad facilities. Both claims are to be considered, and after the wants of the residents within a State or locality through which the road passes have been adequately supplied, regard being had to all the facts bearing upon the subject, they ought not to be permitted to demand more, at the cost of the ability of the road to successfully compete with its rivals in the transportation of interstate passengers and freight."

In *Atlantic Coast Line v. Wharton*, 207 U. S. 328, an order of the Railroad Commission of South Carolina, requiring the railroad company to stop a through fast train at a local station in that state, was held to be an unreasonable interference with interstate commerce, on the ground that the railway company had furnished reasonable accommodations at the station in question.

In considering the question of reasonable facilities, Mr. Justice PECKHAM in delivering the opinion of the court, said:

"The term 'adequate or reasonable facilities' is not in its nature capable of exact definition. It is a relative expression, and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodations asked for, and to all other facts which would have a bearing upon the question of convenience and cost. . . . The demand at Latta by people desiring to go to the termination of the road, either at New York or Tampa, would naturally be small. Some of the plaintiff's witnesses said that the demand for transportation at Latta was large, or quite large, and the inconvenience great, but a further examination of these witnesses showed that in specific details there was much lacking and instances of inconvenience were really somewhat limited. But assuming that the number actually inconvenienced by the want of fast trains was 'quite large,' as said by some witnesses, it is perfectly evident the number would be small compared with the inconvenience of the much larger number of through passengers resulting from the stoppage of these trains at Latta and other similar stations in the State.

To stop these trains at Latta, and other stations like it, which would bring equally strong reasons for the stoppage of the trains at their stations, would wholly change the character of the trains, rendering them no better in regard to speed than the other trains, 39 and 40, and would result in the inability of what had been fast trains to make their schedule time, and a consequent loss of patronage, also the loss of compensation for carrying the mails, which would be withdrawn from them, and the end would be the withdrawal of the trains, because of their inability to pay expenses. All these are matters entitled to consideration when the question of convenience and adequate facilities arises.

There is no contradiction in the testimony that the company desires, so far as is fairly possible, to pay as much attention to the local demands as to the 'through' claims."

This statute cannot be upheld as a reasonable exercise of the admitted police power of the state to make regulations for the safe passage of the trains of one company across the railroad of another, by requiring that, in the absence of other adequate safeguards, such trains shall come to a stop before crossing.

The manifest purpose of the statute is to provide for the transfer of passengers, baggage, mails and express freight at junction points. It does not provide that the trains of one company shall stop *before* crossing the tracks of another company. The laws of the state permit trains to pass over such crossings without stopping, where adequate interlocking plants are maintained, as is the case at Lathrop.

The second section of the statute, the emergency clause, shows that the law is deemed necessary because "the trains service is very inconvenient and unsatisfactory in some places." The Bill shows that the train service is neither inconvenient nor unsatisfactory at Lathrop, and that the maintenance of an interlocking device makes it more safe to pass trains over the crossing without stopping them, than to stop them at the crossing. It is a matter of common knowledge that

trains which stop at such crossings for the exchange of passengers, usually stop on the crossing.

Respectfully submitted,

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